

Date: 20070419

File: 166-02-32540

Citation: 2007 PSLRB 38



*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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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)

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.  
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**Grievance referred to adjudication**

[1] Simon Cloutier (“the grievor”) works for the Department of Citizenship and Immigration (“the employer”) and, at the time of the events related below, held a position at the PM-03 group and level. In 1999, he was President of Local 10405 of the Canada Employment and Immigration Union, a component of the Public Service Alliance of Canada.

[2] On June 1, 2001, the grievor received a disciplinary measure of an eight-day suspension for incidents that occurred on May 9, 2001.

[3] On July 10, 2001, the grievor filed a grievance to contest the disciplinary measure. The grievance was referred to adjudication on July 10, 2003, and the hearing took place in 2006 as part of the presentation of several grievances involving him.

[4] The delay between the reference to adjudication and the hearing occurred because the grievor had filed complaints under section 23 of the *Public Service Staff Relations Act*. The grievor argued that the employer had acted in reprisal.

[5] 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 (“the former Act”).

**Summary of the evidence**

[6] The common evidence adduced for five other files involving the same parties also applies to this file. Four of those files dealt with disciplinary measures (a three-day suspension (166-02-31840), a five-day suspension (166-02-32539), an eight-day suspension (166-02-32540) and a 20-day suspension (166-02-32541)), and the fifth file dealt with the grievor’s dismissal and layoff. The parties referenced documents adduced in any of those five files for their arguments.

[7] In the disciplinary letter dated June 1, 2001 and given to the grievor (Exhibit E-4), the employer also summarized the events that occurred on May 9, 2001. The letter reads as follows:

[Translation]

...

*On Wednesday, May 9, 2001, you showed up at the office of Monique Leclair, Director General, to try to meet with her. Ms. Leclair was not available so you met with Lucien Bélanger to demand the destruction of a withdrawal letter signed by one of your former colleagues. During this brief meeting with Mr. Bélanger, he informed you that he would handle your request. He asked you to return to work and not to meet with the investigators, Ms. Lamontagne and Mr. Lafrenière, who were involved with this withdrawal letter.*

*You exhibited insubordination by not following Mr. Bélanger's instructions because you chose to go to the interview room where the two investigators were located, with the intention of demanding the destruction of your former colleague's withdrawal letter. At that meeting, you displayed disrespectful and intimidating behaviour toward those present, thereby contravening the Department's Code of Conduct.*

*On May 9, 2001, your lunch hour was from 12:00 to 13:00. You did not return to your office until 13:45. You did not request and did not obtain permission from your manager to be absent from your desk on May 9 from 13:00 to 13:45. You therefore did not adhere to your work schedule, which contravenes the Department's Code of Conduct.*

...

[8] In 2001, Lucien Bélanger was Director of Executive Services and reported to Monique Leclair, Director General for the Quebec Region of the Department of Citizenship and Immigration.

[9] The grievor indicated that on May 9, 2001, early in the afternoon, he and Micheline Rioux, Diane L'Heureux and Antonietta Sepulveda went to Ms. Leclair's office on the third floor. The grievor wanted to discuss a withdrawal letter that had been signed by Ms. Sepulveda concerning a harassment complaint that she had made against certain individuals. Ms. Leclair was not there. Mr. Bélanger asked the four people to wait, and he then met with them.

[10] Mr. Bélanger confirmed that he authorized the employees to meet with him. The grievor and Ms. Rioux told him that Ms. Sepulveda had met them at noon and told them that she was coming from the office of the investigators looking into a complaint that she had filed and that, in the end, she had signed a withdrawal letter.

[11] The grievor stated that the withdrawal letter not only referred to the harassment complaint but also renounced all other recourse. He indicated that he and his colleagues wanted to meet the investigators on the second floor to rescind the withdrawal letter.

[12] Mr. Bélanger testified that he asked the group not to intervene with the investigators and that he would look after Ms. Sepulveda's case. He stated that he asked the employees to return to their work, which the grievor and his colleagues did.

[13] A short time later, he called the investigators' office on the second floor. He heard voices and asked one of the investigators who was in the office. The investigator answered that the grievor, along with three other people, were there. Mr. Bélanger asked to speak to one of the employees present, and spoke to Ms. Rioux. He told her that the group did not have permission to meet with the investigators and that they must leave immediately.

[14] Mr. Bélanger sent a report to the employees' managers, Ms. Gignac and Carole Lamarre. At about 13:50, he received an email from the grievor complaining about the aggressive behaviour of one of the two investigators he had met with earlier (Exhibit E-5).

[15] In 2000, Louise Martin was Assistant Director of Corporate Services with the Department of Citizenship and Immigration and was the grievor's superior. She testified that on May 18, 2001, she had called the grievor to a meeting to be held on May 23, 2001 in order for him to explain the discussions he had with Mr. Bélanger and the investigators on May 9, 2001 (Exhibit E-6).

[16] Several emails were exchanged in which the grievor asked to be informed in writing about the allegations against him. In addition, he asked to postpone the meeting (Exhibits E-7 and E-8).

[17] The meeting to learn the facts of the events of May 9, 2001 was held on May 24, 2001. Ms. Martin was accompanied by Arianne Hovington, a human resources officer. Ms. Hovington and Ms. Martin had met with Mr. Bélanger and the two investigators, Michel Lafrenière and Monica Lamontagne, on May 15, 2001. On May 18, 2001, a report of these meetings was prepared and attached to the report of the May 24, 2001 meeting with the grievor (Exhibit E-9).

[18] Ms. Martin pointed out that the grievor's lunch break was from 12:00 to 13:00 and that he had to ask permission to be absent after 13:00.

[19] Mr. Lafrenière testified that he had legal training and had been involved in several investigations. He stated that he conducted the investigation into Ms. Sepulveda's complaint. In his opinion, Ms. Sepulveda had difficulty providing specific facts. She allegedly asked to terminate the investigation saying that she was unable to continue and that it was in good faith, after taking a break, that she signed the withdrawal letter (Exhibit F-1).

[20] Mr. Lafrenière confirmed that at about 13:30 on May 9, 2001, he heard knocking at his office door. The grievor and three other employees entered. Ms. Rioux and the grievor asked that Ms. Sepulveda's withdrawal letter be destroyed. One of the individuals mentioned that he looked after "union matters."

[21] Mr. Lafrenière mentioned that the voices of both Ms. Rioux and the grievor were raised.

[22] For his part, the grievor called Ms. Sepulveda as a witness. She stated that she found the investigation of her complaint tedious. It is true that she wanted to end the process, and that is why she would have agreed to sign the withdrawal letter.

[23] Ms. Sepulveda confirmed that she accompanied her colleagues to Mr. Bélanger's office. She stated that after leaving his office, the group went to the second floor and one of them checked to see if the investigators were there. In her view, the meeting in the investigators' office was calm and courteous.

[24] She pointed out that Mr. Bélanger contacted her on May 9, 2001 late in the afternoon. She allegedly told him that she did not want her colleagues to have any problems because they wanted to help her with her withdrawal letter.

[25] In his testimony, the grievor corroborated the chronology of events of May 9, 2001. He pointed out, however, that Mr. Bélanger was the employer's representative for filing harassment complaints (Exhibit F-4), and that consequently it was appropriate for the grievor and his three colleagues to meet with him on May 9, 2001.

[26] He stated that he later prepared a written report about the May 9, 2001 incident when preparing a complaint of unfair labour practice against the employer. He adduced an extract (Exhibit F-7).

[27] He testified that, after the meeting with Mr. Bélanger, he went to the second floor and determined that the investigators were in their office. He and his colleagues asked to enter. They mentioned that Ms. Sepulveda's withdrawal included a waiver of all other recourse and asked that it be rescinded.

[28] In his view, his tone of voice during the discussion was appropriate. It was allegedly one of the investigators who raised the tone when the group was leaving. Apparently the investigator even addressed the grievor in an informal manner.

[29] The grievor stated that he had some problems being represented in order to discuss the events of May 9, 2001 with the employer.

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

[30] The employer argued that, at the time of the May 9, 2001 events, the grievor was not fulfilling a union function. While he felt it was important to handle Ms. Sepulveda's case, he had to get permission to be absent from his work.

[31] The grievor chose to go to the investigators' office, and when he found that they were not there, he went to the Director General's office. Mr. Bélanger met with the grievor and the three people with him. Mr. Bélanger said that he would look after Ms. Sepulveda's case and that the employees should return to their workplace.

[32] The grievor and his colleagues did not have permission to go to the investigators' office between 13:00 and 13:30. They demanded that a withdrawal letter be destroyed.

[33] The grievor had previously been reprimanded for being absent without permission, which is why a more severe disciplinary measure is justified.

[34] For his part, the grievor considers that his actions on May 9, 2001 were entirely legitimate. It was normal for him to try to help Ms. Sepulveda. Moreover, it was during the noon hour, at the end of his meal break of 12:00 to 13:00, that he handled Ms. Sepulveda's case.

[35] The grievor argued that Mr. Bélanger agreed to meet with them. The meeting with the investigators was a spontaneous decision made when the group was walking around the second floor and saw that the investigators were in their office.

[36] The grievor stated that he had problems being represented in order to discuss the events of May 9, 2001 with the employer.

### **Reasons**

[37] The testimonies and the documents adduced in evidence describe in detail the unfolding of events on May 9, 2001. Although the actions are described differently, there is no contradiction in the chronology of the facts.

[38] The grievor's efforts to deal with Ms. Sepulveda's case began during the lunch break. It is possible that he was unable to inform his immediate supervisor of his actions. Given that he met with Mr. Bélanger after 13:00, it is possible that the grievor thought he had permission to be absent and forgot to inform his supervisor.

[39] However, during his testimony, as in his summary of the facts (Exhibit E-7), the grievor confirmed that he and his three colleagues went to the investigators' office and then to meet with the Director.

[40] Mr. Bélanger's testimony was credible when he stated that he told the grievor and the other three individuals with him that he would look after Ms. Sepulveda's case.

[41] It is therefore difficult to agree with the grievor when he says that he thought he had permission to meet with the investigators.

[42] The grievor then took the initiative to enter the investigators' office and to demand that they alter the wording of the withdrawal signed by Ms. Sepulveda. This initiative did not fall within usual procedure and does not refer to any right set out in the collective agreement or the former *Act*. To be absent from work, the grievor needed to obtain permission, which he did not do.

[43] I find, however, that the evidence is not conclusive regarding the attitudes and actions taken or the tone of the conversation that took place between the investigators and the grievor. However, given that the grievor was absent without permission and that that is the employer's main criticism, I find that it was appropriate to impose a disciplinary sanction.

[44] This file was referred to adjudication along with other files concerning the grievor. The evidence for each individual file was included in all of the other files. The parties referred to the other files in their arguments concerning the disciplinary sanctions imposed in this file.

[45] The employer referred to the grievor's previous infractions. On November 5, 1999, the employer imposed a three-day suspension for events that occurred in the fall of 1999. The grievor allegedly used the Department's equipment despite being told not to by his supervisor. Moreover, he received a reprimand in 1998 for being absent from work without permission. The undersigned reduced that three-day suspension to one day (2007 PSLRB 37).

[46] In June 2000, the grievor received a five-day disciplinary measure. I am unable to consider myself seized with those facts since I rendered a decision that found the grievor's grievance had been filed late and was therefore outside the adjudicator's jurisdiction (2007 PSLRB 15). That suspension therefore remains unchanged in the file.

[47] The grievor was reprimanded in 1998 for being absent without permission; he received a three-day suspension in 1999, which was later reduced to one day. The grievor received a five-day disciplinary measure in 2000. In this case, the grievor refuses to follow the employer's instructions and is again absent from work without permission on May 9, 2001. However, the employer did not prove all of the actions for which the grievor was criticized on May 9, 2001 (Exhibit E-4). It is my view that a six-day suspension would respect the principle of increasingly severe sanctions and would be more appropriate under the circumstances.

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

*(The Order appears on the next page)*



**Order**

[49] I allow the grievor's grievance in part. I rescind the eight-day sanction imposed by the employer and replace it with a disciplinary sanction equal to six days of work without pay. The grievor is to be reimbursed for the equivalent of two days' pay and applicable benefits.

April 19, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**