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**Citation:** 2007 PSLRB 48



*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 grievances 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

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Heard at Montréal, Quebec,  
January 23 to 26, 30 and 31, May 3 to 5 and 8 to 12, October 31 to November 3,  
and, specifically for these files, July 10 to 13, 2006.  
(P.S.L.R.B. Translation)

**Grievances referred to adjudication**

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

[2] On the afternoon of July 3, 2003, the grievor was called to a meeting by his manager, Dianne Clément, Acting Director of the Montréal office of Inland Services, Department of Citizenship and Immigration. The grievor asked that this meeting be held in the presence of a union representative.

[3] The meeting took place on July 3, 2003 without the presence of the grievor’s union representative.

[4] The grievor objected to the fact that he was not represented at a disciplinary meeting and filed two grievances. The first grievance, dated July 25, 2003, claimed that the employer did not comply with the notice period for the meeting and the second grievance, also filed on July 25, 2003, denounced the fact that the employer refused to allow the grievor to have a union representative present at the meeting.

[5] These grievances were referred to adjudication on June 30, 2005. The employer granted an extension of the time period. The hearing before the undersigned was held in July 2006.

[6] 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*, these references 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**

[7] Both of these grievances were heard as part of a hearing combining several grievances involving the same parties. The parties referred to documents adduced in other cases at the hearing, notably the grievance contesting the grievor’s dismissal.

[8] The grievor stated that, on the afternoon of July 3, 2003, Ms. Clément wanted to meet with him. He allegedly asked to be accompanied by a union representative and confirmed this request in an email sent at 14:40 that reads as follows:

[Translation]

...

*You have just asked me to come to your office. I asked for the representation that you designated for me to be present. The individual is presently on the telephone. I left her an explicit message and asked her to call me back.*

...

[9] The grievor then asked what the reasons were for the meeting and Ms. Clément responded as follows by email at 15:45:

[Translation]

...

*I want to talk to you about three things*

- *the mode of communication*
- *the hierarchy*
- *the email that you sent today at 10:57*

...

[10] The grievor then asked Ms. Clément to tell him in writing what she wanted to talk to him about. Here is the email sent at 15:52:

[Translation]

...

*Jacqueline and I suggest that you simply send me in writing what you want to talk to me about. However, if you order me to come to your office, I will do so along with Jacqueline (Lemoine), who has told me that she is available until 16:30 this afternoon.*

...

[11] Shortly after this email, Ms. Clément asked the grievor to meet with her. She told him that it was not a disciplinary measure but that she wanted to speak to him.

[12] The grievor stated that he ultimately had to meet with Ms. Clément. He told her that he was not prepared to be there without a witness. She told him that there was a communication problem because he wanted to handle everything in writing rather than coming to a meeting. The grievor responded that he preferred to have things in writing because he had filed a complaint against the employer.

[13] The grievor stated that Ms. Clément then talked about the hierarchy. She asked him to speak directly with her rather than communicating with Julie Thibodeau, the grievor's supervisor.

[14] Lastly, the grievor stated that Ms. Clément reprimanded him for the disrespectful tone of an email that he had sent to her that morning. He then told her that she was reprimanding him for things and that he did not have a witness. It was then that the meeting ended.

[15] Under cross-examination, the grievor mentioned that his union representative was available until 16:30. Questioned as to why he had not asked his union representative to go with him to the meeting with Ms. Clément at 16:00, he said that he did not contact his representative because the employer had told him that it was not a disciplinary meeting.

[16] The employer called Ms. Clément to testify. She related the facts as they had occurred on July 3, 2003. She corroborated the chronology of events given by the grievor in his testimony.

[17] Ms. Clément stated, however, that she told the grievor on July 3, 2003, around 14:30, that she wanted to meet with him. Several emails were exchanged and by around 15:48 she still had not met with him. Finally, around 15:50, the grievor asked to proceed in writing.

[18] Ms. Clément stated that she wanted to talk to the grievor specifically about written communications. She wanted to communicate verbally.

[19] Shortly before 16:00, Jacqueline Lemoine, President of Local 10405, called Ms. Clément to discuss her meeting with the grievor. She asked if he required a representative, and Ms. Clément told her that she did not think it was necessary because she simply wanted to talk to him about how they should operate.

[20] Finally, around 16:15, Ms. Clément asked the grievor to meet with her because she wanted to clarify their means of communication.

[21] According to Ms. Clément, the meeting was very short (about three to five minutes) because the grievor asked to leave when she spoke about the email that he had sent that morning.

[22] Ms. Clément added that, shortly after the meeting, she sent a report of it to Human Resources that reads as follows:

[Translation]

...

*Clearly it did not go well. I almost had to order him to come to see me. He did not want to come without his union representative. He came to my office 10 minutes later as I was getting ready to find him for the second time. Julie was there. He told me that it was illegal, and that for any meeting in a manager's office he was entitled to be represented because there was no way to know how things would go.*

*I told him that I simply wanted to talk about how we would operate and thus I spoke about three things (always very calmly)*

*1) Our method of communication and the fact that I wanted him to communicate verbally.*

*He does not want that; he said that because he is in court, he wanted everything in writing.*

*2) The hierarchy: I wanted him to go through Julie, his supervisor, before communicating with me. He said that it is because he did not agree with her that he wrote directly to me.*

*3) His email today: I said that I found it disrespectful. He became angry because he did not have a witness to hear me say that it was not respectful.*

...

[23] The grievor then sent her the following email about the meeting:

[Translation]

...

*The purpose of this message is to summarize the meeting that has just ended. Given the significant stress that it has caused me, I want to ensure that, in this context, I fully understood what you said.*

*I began by saying that it was illegal and constituted intimidation to refuse to allow me a representative because we never know in advance how the conversation will go. I asked you to consult the appropriate case law. When I was at the Alliance, my supervisor informed me about this right. I told you that I did not agree with this meeting without a witness.*

*You told me that Julie Thibodeau was acting as a witness.*

*You told me that I had a communication problem, that you wanted us to talk to each other and that you refused to write to me. I explained to you that we were involved in a serious legal proceeding and that it is not possible in the context. You maintained your position.*

*You told me that I was not respecting the hierarchy in my email in question. I told you that, on the contrary, given that I did not agree with Julie Thibodeau's position, I complained to you. You told me that I should file grievances instead.*

*You told me that my email was disrespectful without explaining how, although I asked you to do so.*

*Finally, you told me that I was authorized to contact the persons designated to hear harassment complaints. I told you that I intended to do so as soon as possible.*

. . .

### **Summary of the arguments**

[24] The grievor's representative pointed out that when there is a disciplinary meeting, the employee is entitled to have a union representative present under article 17 of the collective agreement between the Treasury Board and the PSAC, Program and Administrative Services (all employees). Clause 17.02 reads as follows:

***17.02** When an employee is required to attend a meeting, the purpose of which is to conduct a disciplinary hearing concerning him or her or to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of one (1) day's notice of such a meeting.*

[25] On July 3, 2003, the grievor informed the employer of his intention to have a union representative present. The employer's breach essentially invalidates the

disciplinary process. In addition, 24 hours' notice was required for the disciplinary meeting.

[26] For its part, the employer argued that the July 3, 2003 meeting was not disciplinary. Ms. Clément was exasperated about always having to send an email to communicate with the grievor. She simply wanted to tell him that it would be better to communicate verbally. She also wanted him to deal with his supervisor rather than with her.

[27] The employer pointed out that, if the grievor had really wanted representation, all he had to do was contact his union representative, who by the grievor's own admission, was available until 16:30.

### **Reasons**

[28] The grievances refer to article 17 of the collective agreement. Clause 17.02 sets out the employee's right to be represented when he or she "is required to attend a meeting, the purpose of which is to conduct a disciplinary hearing . . . or to render a disciplinary decision concerning him or her."

[29] The evidence and the content of the emails show that the July 3, 2003 meeting was a short one.

[30] The discussion dealt with the method of communication and the hierarchy, and when it moved to an email that had been sent, the meeting ended. At first glance, the meeting does not appear to deal with disciplinary matters.

[31] It is my view that the adjudicator must take into consideration the facts and the context when evaluating the nature of the July 3, 2003 meeting.

[32] As for the context of that late-afternoon meeting, I believe that the grievor was informed of the reasons for the meeting. He contacted his union representative and then indicated at the last minute that he preferred to communicate in writing. He did not convince me that he wanted to attend the meeting in the company of his union representative. Indeed, in his email sent at 14:46, he talks about the representation that the Director assigned to him.

[33] The chronology of the facts and the content of the discussions are not contested.

[34] In her testimony, Ms. Clément explained that she wanted to establish a “face-to-face” mode of communication with the grievor. She was finding it difficult to communicate by email.

[35] In fact, the first topic discussed on July 3, 2003 was the method of communication and the many email exchanges.

[36] The second topic was the hierarchy. Ms. Clément wanted the grievor to communicate more with his supervisor rather than with her. This does not appear to me to be a disciplinary matter.

[37] The third topic involves the email that the grievor sent on the morning of July 3, 2003. Ms. Clément mentioned that she found the words disrespectful. On this point, the discussion could have become confrontational with grievor. It appears that it was at this point that he stated that the conversation involved reprimands and the meeting ended. In the email that Ms. Clément sent shortly afterwards, she mentioned that the grievor became angry and that the meeting ended.

[38] The testimony is consistent regarding the fact that the meeting ended when this topic was broached. Ms. Clément did not insist that the meeting continue.

[39] It is my view that, overall, the meeting of July 3, 2003 was not disciplinary in nature. Moreover, while the third discussion topic took the tone of a reprimand, there was no discussion; the meeting ended.

[40] Since the meeting was not disciplinary in nature, union representation and notice were not required.

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

*(The Order appears on the next page)*



**Order**

[42] The grievances are dismissed.

May 11, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,  
adjudicator**