

Date: 20080219

File: 561-02-199

Citation: 2008 PSLRB 12



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

SIMON CLOUTIER

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Cloutier v. Public Service Alliance of Canada

In the matter of a complaint made under section 190 of the *Public Service Labour Relations Act*

REASONS FOR DECISION

Before: Michele A. Pineau, Vice-Chairperson

For the Complainant: Himself

For the Respondent: Jacquie de Aguayo, Public Service Alliance of Canada

(Decided without an oral hearing)

(P.S.L.R.B. Translation)

Complaint before the Board

[1] Simon Cloutier (“the complainant”) filed an unfair labour practice complaint under section 190 of the *Public Service Labour Relations Act* (“the Act”) against three representatives of the Public Service Alliance of Canada (PSAC or “the bargaining agent”), namely, John Gordon, President, Jacquie de Aguayo, Coordinator, and Edith Bramwell, a union representative. The complaint alleges a violation of paragraph 190(1)(g) of the Act within the meaning of section 185.

Summary of the evidence

[2] The complainant states that in May 2007, the PSAC promised to provide him with a legal opinion on certain decisions rendered by the Public Service Labour Relations Board (“the Board”), to prepare a request for judicial review. The complainant alleges that he never received the legal opinion despite his repeated requests.

[3] The Board received this complaint by fax on October 26, 2007, followed by the original, which was delivered by mail on November 22, 2007. The Board acknowledged receipt of the complaint on November 27, 2007. The PSAC submitted its response on December 5, 2007. The following excerpt is relevant to the dispute:

...

Please be advised that a copy of the requested legal opinion was provided to the complainant. Furthermore, the Alliance maintains that the complainant was informed verbally of the contents of this legal opinion. The decision as to whether or not to provide a copy of the legal opinion to the complainant is discretionary and is not indicative, as such, of an unfair practice or unfair representation.

Insofar as the sole corrective measure requested was granted and the Alliance did not act in an arbitrary [sic] or discriminatory manner or in bad faith toward the complainant, the Alliance submits there is no basis for the complaint.

... The Alliance respectfully requests that this complaint be dismissed without a hearing.

...

[4] On December 6, 2007, the Board acknowledged receipt of the bargaining agent’s response and requested that the complainant submit his comments no later than

December 21, 2007. The complainant did not reply as requested. Canada Post Corporation confirmed that the complainant received the request by mail on December 10, 2007.

[5] On January 14, 2008, the Board sent the complainant a second letter, requesting that he reply no later than January 28, 2008 and advising him that his file could be closed if he did not respond. No response was received from the complainant. The Board received confirmation from Canada Post Corporation that the complainant went to a Montréal post office on January 26, 2008 at 15:30 to take delivery of the letter.

Reasons

[6] Subsection 191(1) of the *Act* stipulates that the Board must act if the parties have not settled a complaint within a period that the Board considers to be reasonable:

191. (1) Subject to subsection (3), on receipt of a complaint made under subsection 190(1), the Board may assist the parties to the complaint to settle the complaint. If it decides not to do so or if the complaint is not settled within a period that the Board considers to be reasonable in the circumstances, it must determine the complaint.

[Emphasis added]

[7] Section 41 of the *Act* states that the Board may decide any matter without holding an oral hearing:

41. The Board may decide any matter before it without holding an oral hearing.

[8] In my estimation, the complainant was given enough time to make his position known on the PSAC's response, and the written arguments on file are sufficient to determine the complaint without an oral hearing.

[9] The facts of the case are straightforward. The complainant claims not to have received a legal opinion from his bargaining agent on the timeliness of a request for a judicial review of certain Board decisions pertaining to him. The bargaining agent states that the opinion was indeed provided, both verbally and in writing. The complainant does not deny those facts.

[10] The duty of fair representation resides essentially in the bargaining agent's good faith in representing an employee. In that regard, section 187 of the *Act* reads as follows:

187. No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.

[11] The bargaining agent is by no means obligated to provide a copy of a legal opinion obtained while representing an employee. Such an opinion is provided for information purposes only, and the bargaining agent may choose another course of action after noting the opinion. It is not bound by a third party's opinion.

[12] Furthermore, the complainant obtained a copy of the legal opinion from the bargaining agent as requested. As a result, there is no basis for the complaint.

[13] For all of the above reasons, the Board makes the following order :

(The Order appears on the next page)

Order

[14] The complaint is dismissed.

February 19, 2008.

P.S.L.R.B. Translation

**Michele A. Pineau,
Vice-Chairperson**