

**Date:** 20081222

**File:** 561-02-233

**Citation:** 2008 PSLRB 107



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**GILLES MARTINEAU**

Complainant

and

**DENIS MÉTHÉ AND CORRECTIONAL SERVICE OF CANADA**

Respondents

Indexed as

*Martineau v. Méthé and Correctional Service of Canada*

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

**REASONS FOR DECISION**

***Before:*** [John A. Mooney, Board Member](#)

***For the Complainant:*** [Himself](#)

***For the Respondents:*** [Roxanne Lépine, Developmental Labour Relations Consultant](#)  
[and Muriel Lamothe, Employer Representation Officer](#)

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Decided on the basis of written submissions  
filed August 22 and September 11 and 19, 2008.  
(PSLRB Translation)

**I. Complaint before the Board**

[1] Gilles Martineau (“the complainant”) works as a program officer at the WP-04 group and level for the Correctional Service of Canada (CSC) at Cowansville Institution. On May 3, 2008, he filed an unfair labour practice complaint under paragraph 190(1)(g) of the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22. The Public Service Labour Relations Board (PSLRB) received his complaint on May 7, 2008. Denis Méthé, Assistant Commissioner of Human Resources, CSC, and the CSC (“the respondents”) are named as respondents in the complaint.

[2] In his complaint and in the documents accompanying it the complainant explained that in 2000, Denis Paradis and Roger Tousignant filed a group classification grievance with the CSC on behalf of program officers. The grievance lists the names of the program officers covered by the grievance, including the complainant’s name. In that grievance, Mr. Paradis and Mr. Tousignant contest the classification of their positions and ask that any wage adjustment that might come from an upward reclassification of the positions be retroactive to January 16, 1998. The CSC allowed the grievance on April 1, 2002, and the program officer position was reclassified from WP-03 to WP-04 as of that date.

[3] According to the complainant, the respondents allegedly negotiated a “secret agreement” with Mr. Paradis and Mr. Tousignant, granting them acting pay as of February 1998 if they withdrew their classification grievance.

[4] On February 28, 2007, the complainant filed a grievance with the CSC, requesting that it pay him the same amount that it had paid Mr. Paradis and Mr. Tousignant. The complainant’s bargaining agent, the Public Service Alliance of Canada (“the bargaining agent”), refused to take the grievance to the third level of the grievance process because the grievance had not been filed within the time limit set out in the collective agreement.

[5] The complainant filed this unfair labour practice complaint with the PSLRB on May 3, 2008. He alleges in the complaint that the respondents carried out an unfair labour practice by negotiating the “secret agreement” and by refusing to apply the agreement reached between the CSC and Mr. Paradis and Mr. Tousignant to all program officers. According to the complainant, a classification grievance is a “collective”

grievance, and the settlement of a classification grievance is always applied to all employees who hold the same position. The complainant requests, among other things, that the respondents remit back pay to all program officers employed between February 1998 and April 2002, commensurate with the new classification of their positions.

## **II. Objection to my jurisdiction to hear this complaint**

[6] On May 28, 2008, the respondents wrote to the PSLRB asking that the complaint be dismissed for several reasons. Among other things, they asked me to dismiss the complaint because the complainant did not comply with the time limit set out in subsection 190(2) of the *PSLRA*, which stipulates that an unfair labour practice complaint must be made not later than 90 days after the date on which the complainant knew, or ought to have known, of the circumstances giving rise to the complaint. The respondents pointed out that the complainant's position had been reclassified from WP-03 to WP-04 as of April 1, 2002. The complainant did not object at that time to the fact that his position was not reclassified retroactively to January 16, 1998. In the respondents' opinion, the complaint is outside the time limit set out in subsection 190(2) of the *PSLRA* because more than six years have passed since the employer decided to raise the classification of the complainant's position.

[7] The respondents also indicated that Mr. Paradis and Mr. Tousignant had filed individual grievances and that the respondents had reached an agreement with them to resolve those grievances through mediation.

[8] The complainant responded to the respondents' objection on June 13, 2008. He wrote that he had not filed his "grievance" because he had no idea that the respondents had used unfair practices.

[9] On July 14, the PSLRB asked the parties to submit their written comments on its jurisdiction to hear this complaint and, more specifically, on the matter of whether the complaint had been filed in accordance with the time limit set out in subsection 190(2) of the *PSLRA*.

[10] On July 31, 2008, the bargaining agent sent the PSLRB written arguments on the question of my jurisdiction to hear this complaint. I have not considered these

arguments in this decision because the bargaining agent is not a party to this complaint and did not seek intervenor status.

### **III. Arguments on my jurisdiction to hear the complaint**

#### **A. For the respondents**

[11] In their written arguments of August 22 and September 19, 2008, the respondents reiterate that the complaint is untimely.

[12] The respondents argued that the agreement concluded with Mr. Paradis and Mr. Tousignant is confidential and cannot be a trigger for this unfair labour practice complaint because the complainant was not a party to the agreement.

[13] The respondents added that although the complainant could have filed a grievance in 2002, as did Mr. Paradis and Mr. Tousignant, to contest the date of his position's reclassification, he chose not to. According to the respondents, the complainant is using the unfair labour practice complaint process as an alternative to the grievance process because the bargaining agent refused to support him when he filed a grievance in 2007.

#### **B. For the complainant**

[14] In his written arguments of September 11, 2008, the complainant writes that the respondents are using "technicalities" to avoid discussing the substance of the dispute. The complainant adds that he did not act in 2002 because he believed that Mr. Paradis' and Mr. Tousignant's grievances covered all the CSC's program officers. The complainant also writes that it was not until 2007, when he learned that Mr. Paradis and Mr. Tousignant had accepted an agreement, that he filed a grievance against the CSC. The complainant delayed filing his unfair labour practice complaint because he wanted to resolve the matter with CSC representatives before turning to the PSLRB.

### **IV. Reasons**

[15] The respondents claim that the complainant did not file his unfair labour practice complaint within the prescribed time. Subsection 190(2) of the *PSLRA* states that the time limit for presenting such a complaint is 90 days:

*190. (2) Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90*

*days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*

[16] The *PSLRA* does not provide for any extension, and thus the time limit is mandatory, as pointed out by the adjudicator in *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78.

[17] The complainant argues that the respondents allegedly negotiated a “secret agreement” with Mr. Paradis and Mr. Tousignant granting them acting pay as of February 1998 so that they would withdraw their grievances. The complainant alleges in his complaint that the respondents carried out an unfair practice by entering into a “secret agreement” with Mr. Paradis and Mr. Tousignant and by refusing to apply the agreement to all CSC program officers. The action for which the respondents are being criticized and that, in the complainant's opinion, constitutes an unfair practice, is the 2006 secret agreement. It is my view, therefore, that the period began when the complainant learned of the existence of the agreement. According to the complainant, he knew of the agreement's existence on February 28, 2007, because he alluded to it in the grievance that he filed with the CSC on that date. The complainant filed his unfair labour practice complaint on May 3, 2008, more than 14 months after learning of the agreement. Accordingly, the complainant did not present his unfair labour practice complaint within the time limit prescribed by subsection 190(2) of the *PSLRA*. His complaint is therefore dismissed for that reason.

[18] Given that I have decided to dismiss the grievance because the complainant did not file it within the time limit prescribed by the *PSLRA*, it is not necessary for me to address the other questions that the respondents raised about my jurisdiction to hear this complaint.

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

*(The Order appears on the next page)*

**V. Order**

[20] The complaint is dismissed.

December 22, 2008.

PSLRB Translation

**John A. Mooney,  
Board Member**