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File: 425-HC-0006

Citation: 2009 PSLRB 105

*Parliamentary Employment and
Staff Relations Act*



Before the Public Service
Labour Relations Board

BETWEEN

LUC BEAULNE

Applicant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Beaulne v. Public Service Alliance of Canada

In the matter of an application for the reconsideration of a decision under section 17
of the *Parliamentary Employment and Staff Relations Act*

REASONS FOR DECISION

Before: Michele A. Pineau, Vice-Chairperson

For the Applicant: Robert Doucet

For the Respondent: Jacquie de Aguayo

Decision rendered without a hearing.

(PSLRB Translation)

Application before the Board**Introduction**

[1] On February 19, 2009, the Public Service Labour Relations Board (“the Board”) received from the applicant, Luc Beaulne, an application for reconsideration of the decision rendered by Board Member John Mooney in *Beaulne v. Public Service Alliance of Canada*, 2009 PSLRB 10, on January 20, 2009. Mr. Beaulne alleges that the Board Member erred in fact and in law and asks that the Board Member’s order be reversed. The Board Member’s decision is also the subject of an application for judicial review filed on February 25, 2009.

[2] On March 6, 2009, the Board acknowledged receipt of Mr. Beaulne’s application for reconsideration and informed the parties that the case would be sent to mediation unless they otherwise informed the Board. The mediation did not take place.

[3] On March 23, 2009, Mr. Beaulne filed a six-page document with the Board in which he raised the following two questions: How does section 20 of part 2 of the *P.E.S.R.A. Regulations and Rules of Procedure* of the *Parliamentary Employment and Staff Relations Act (PESRA)* apply? Why did the Board provide the parties with the option of mediation? The Board did not deal with the applicant’s questions.

[4] On March 23, 2009, the Public Service Alliance of Canada (PSAC) filed its response to Mr. Beaulne’s application for reconsideration. The PSAC stated that the power of reconsideration under section 43 of the *Public Service Labour Relations Act (PSLRA)* does not enable a complainant to pursue a complaint again, and the appropriate course of action is an application for judicial review.

[5] On April 16, 2009, the Board asked Mr. Beaulne to provide arguments showing how, under section 17 of the *PESRA*, his application for reconsideration of decision 2009 PSLRB 10 satisfies the criteria defined in *Danyluk et al. v. United Food and Commercial Workers Union, Local No. 832*, 2005 PSLRB 179.

[6] On April 25, 2009, Mr. Beaulne filed a 17-page document entitled “[translation] Investigation Inconsistencies” and containing detailed arguments on the errors that he considers that the Board Member committed. Mr. Beaulne claims that the errors raised are new “evidence of error” by the Board Member. The case was then assigned to me for determination.

Reasons

[7] First, it is worthwhile to summarize the unfair labour practice complaint that was the subject of Board Member Mooney's decision. The complaint concerned the duty of fair representation, and it was founded on the provisions of section 13 of the *PESRA*. In the complaint, Mr. Beaulne alleged that the bargaining agent had represented a non-member of the PSAC to his detriment. The applicant's employment was eventually terminated. Four years later, the applicant made a complaint alleging that the bargaining agent failed to represent him for those events. The bargaining agent did not receive the applicant's request for representation because a filter on its computer system detected words in the applicant's emails that were considered offensive and blocked them. The Board Member found that, even if the bargaining agent showed poor judgment in installing the filter, the error did not demonstrate arbitrary conduct, and therefore, the PSAC did not violate its duty of fair representation. The Board Member also found that the delay in filing the complaint was unjustified and dismissed it. Mr. Beaulne asks for that decision to be reconsidered.

[8] Under section 17 of the *PESRA*, a Board decision may be reviewed as follows:

17. (1) Subject to subsection (2), the Board may review, rescind, amend, alter or vary any decision or order made by it, or may re-hear any application before making an order in respect thereof.

(2) Any rights acquired by virtue of any decision or order that is reviewed, rescinded, amended, altered or varied pursuant to subsection (1) shall not be altered or extinguished with effect from a day earlier than the day on which the review, rescission, amendment, alteration or variation is made.

[9] Although section 17 of the *PESRA* does not elaborate the criteria that apply to the reconsideration of a decision, case law has developed certain principles that the courts have endorsed. The power of reconsideration is not intended to be an appeal procedure or a way to challenge a Board Member's findings but rather an examination of the following principles:

- new facts that would likely have led the Board Member to a different conclusion had the Board Member been made aware of them before rendering the decision being reconsidered;

- errors of law or principle that cast serious doubt on the Board's previous statutory interpretation; and
- the Board's failure to observe a rule of natural justice.

[10] The Board followed those principles in *Danyluk*, among other cases. That case involved an application for review under section 43 of the *PSLRA*. However, the wording of section 43 of the *PSLRA* is identical to that of section 17 of the *PESRA*. Although the case law has not interpreted section 17 of the *PESRA*, the same Board interprets both statutes. Therefore, it is reasonable to conclude that the two identical sections must be interpreted in the same manner.

[11] Having considered Mr. Beaulne's arguments, I find that he has not raised any new facts but rather is attempting to argue his case anew. Mr. Mooney's decision was based on an assessment of the facts and arguments that were submitted to him. The errors that Mr. Beaulne attributes to the Board Member, even if true, raise no error in interpreting the *PESRA* or failure to observe a rule of natural justice. It is not the decision maker's role in a reconsideration to revisit the same facts or to substitute his or her judgment for that of the Board Member who has had the advantage of hearing the evidence firsthand.

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

(The Order appears on the next page)

Order

[13] The application for reconsideration is dismissed.

August 28, 2009.

PSLRB Translation

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