

Date: 20091015

File: 561-02-231

Citation: 2009 PSLRB 131



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

MARK HAYNES

Complainant

and

STEVEN TUFFIN

Respondent

Indexed as
Haynes v. Tuffin

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

REASONS FOR DECISION

Before: [Renaud Paquet, Board Member](#)

For the Complainant: [Himself](#)

For the Respondent: [Nancy Milosevic, Public Service Alliance of Canada](#)

Decided on the basis of written submissions
filed May 30, 2008 and October 7, 2009.

Complaint before the Board

[1] On May 7, 2008, Mark Haynes (“the complainant”) filed a complaint against Steven Tuffin (“the respondent”). At the time of the complaint, the respondent was the regional vice-president for western Ontario of the Union of Canadian Transportation Employees (“the UCTE”), a component of the Public Service Alliance of Canada (“the PSAC”). The complainant alleges that the respondent committed an unfair labour practice within the meaning of paragraph 190(1)(g) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2 (“the Act”). The complainant alleges that the respondent failed to provide him with advice and representation between January 23 and April 2, 2008.

[2] The complaint involves the following provisions of the Act:

...

190. (1) The Board must examine and inquire into any complaint made to it that

...

(g) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.

...

185. In this Division, “unfair labour practice” means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).

...

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.

...

[3] In his complaint, the complainant did not provide any details on how the respondent failed to provide him with advice and representation. In his October 7, 2009 submission, the complainant referred to several emails exchanged with the respondent between January 23 and April 4, 2008.

[4] On January 23, 2008, the complainant emailed the respondent asking if he was correct in assuming that the respondent was refusing to provide him with representation. The same day, the respondent replied that at no time had he refused representation to any member of the UCTE. He also wrote that he would follow up with the PSAC regional office which would provide the complainant with representation. Later on the same day, the respondent again emailed the complainant, this time indicating that the PSAC regional representative was in Ottawa at that time and that the PSAC representative would call the respondent on his return. On April 1, 2008, the complainant wrote to the respondent indicating that it had been over 60 days and that he had not yet received any communication from him or from the PSAC. He also asked the respondent to advise him on his options about obtaining advice or representation.

[5] The complainant submitted several emails exchanged with UCTE or PSAC representatives between March 5 and May 20, 2009. Those emails also requested representation from the respondent. Those emails do not involve the respondent, and they were exchanged several months after the complaint was filed.

[6] The complainant alleged that the respondent committed an unfair labour practice because he refused representation for the complainant over a five-month period. That refusal was implied by the respondent's inaction in providing representation.

[7] The respondent alleged that the complaint is without merit because the complainant was not denied advice or representation. The respondent provided sound advice during the period covered by the complaint, and he informed the complainant as to his options about available representation. The respondent fulfilled his obligation under the *Act*, and the complainant has not provided any evidence to the contrary.

Reasons

[8] When he filed his complaint, the complainant provided no details to support his allegation other than that the respondent provided no advice or representation between January 23 and April 2, 2008. In his October 7, 2009 submission, the complainant submitted several emails, either sent to the respondent or received from him. Those emails do not support in any way the allegation that the respondent refused to provide advice or representation to the complainant. In fact, the respondent indicated that representation would be provided to the complainant.

[9] The emails submitted by the complainant also indicate that the PSAC representative who was supposed to represent the complainant was slow to get back to him. The complainant did not submit anything to support that that slow response occurred in a manner that was arbitrary or discriminatory or in bad faith. Furthermore, the complainant gave no indication that it prejudiced him or prevented him from exercising his rights.

[10] The complainant also submitted emails sent or received between March and May 2009. Those emails are irrelevant to this complaint. They were exchanged several months after the complaint was filed, and they do not involve the respondent.

[11] The complainant's submission did not convince me that the respondent failed to provide him with advice or representation. Nor did the complainant convince me that the respondent, as a representative of an employee organization, did not meet his legal obligation under section 187 of the *Act*.

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

(The Order appears on the next page)

Order

[13] The complaint is dismissed.

October 15, 2009.

**Renaud Paquet,
Board Member**