

Date: 20091009

File: 561-02-116

Citation: 2009 PSLRB 125



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

HUGUES LEMIRE

Complainant

and

**STATISTICS CANADA, MICHEL VAILLANCOURT, MIRANDA GIMMILLARO AND
MARTINE LAMONTAGNE**

Respondents

Indexed as
Lemire v. Statistics Canada et al.

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 Respondents: [Lourena Prud'homme, Treasury Board](#)

Decided on the basis of written submissions
filed August 17 and October 17, 2006, and September 27, 2009.
(PSLRB Translation)

Complaint before the Board

[1] On July 5, 2006, Hugues Lemire (“the complainant”) filed a complaint against Statistics Canada, Michel Vaillancourt, Miranda Gimmillaro and Martine Lamontagne (“the respondents”). The complainant alleges that the respondents committed unfair practices within the meanings of paragraphs 190(1)(e) and (g) of the *Public Service Labour Relations Act* (“the Act”). The complainant alleges that the respondents did not send to a higher level a grievance that he filed on November 17, 2005 disputing his rejection on probation by Statistics Canada. The complainant requests that the Public Service Labour Relations Board (“the Board”) overturn Statistics Canada’s decision to reject him on probation.

[2] According to the complainant, when the complaint was filed, the grievance filed in November 2005 had still not been sent to a higher level. However, in his written submission of September 27, 2009, the complainant indicated to the Board that the grievance sending problem had since been resolved. However, he is maintaining his complaint because he claims that Statistics Canada’s representatives at the first level of the grievance process acted in bad faith by letting his file lag in the hope that he would drop his grievance.

[3] Relying on *Dhaliwal v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2004 PSSRB 109, the complainant alleges that the employer has a duty to act in good faith when rejecting an employee on probation. The complainant also argues that the *Values and Ethics Code for the Public Service* specifies that senior managers have a particular responsibility to exemplify, in their actions and behaviours, the values of the public service.

[4] The respondents state that they did not violate section 190 of the Act. First, they submit that sections 117 and 157 of the Act refer respectively to the periods for implementing the provisions of a collective agreement or an arbitral award. Those sections are not relevant to the complaint. The respondents specify that they never refused to send the complainant’s grievance to the second level of the grievance process. The grievance was considered pending until a hearing date was agreed to with the bargaining agent representative. On August 17, 2006, when they wrote their reply to the complaint, the respondents had still not heard the grievance.

[5] The complaint refers to the following provisions of the Act:

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

...

(e) the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);

...

(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).*

[6] The unfair practices referred to in section 185 of the *Act* involve employer interference in employee organizations (paragraph 186(1)(a)) and employer discrimination against an employee organization (paragraph 186(1)(b)) or a person who is a member of or participates in an employee organization or who exercises any right under the *Act* (subsection 186(2)). Sections 187 and 188 impose prohibitions on employee organizations. Subsection 189(1) specifies that no person shall intimidate or compel an employee to become or not to become a member of an employee organization or to refrain from exercising any right under Part 2 of the *Act*.

Reasons

[7] The complainant based his complaint on paragraphs 190(1)(e) and (g) of the *Act*. Paragraph 190(1)(e) refers to the employer’s duty to implement the provisions of a collective agreement or an arbitral award. Paragraph 190(1)(g) details prohibitions imposed on employee organizations and employers by the *Act*. There is absolutely nothing in what the complainant submitted to me that could, even once proven, constitute a violation of the provisions of the *Act* on which the complaint is based.

[8] The complainant alleges that the respondents “dragged their feet” with his grievance by not sending it to the second level. It is quite possible that he is right. It seems strange to me that a grievance filed on November 17, 2005 still had not been heard on August 17, 2006, exactly nine months later. The grievance does not deal with

a trivial matter. It concerns a termination, admittedly during probation, but a termination nonetheless. The respondents have not offered any explanation to justify the delay, aside from the fact that a hearing date had not yet been agreed to with the bargaining agent representative.

[9] That said, the respondents' slowness in handling the complainant's grievance does not constitute a violation of the *Act* but rather a failure to observe the time limits associated with the grievance process under the collective agreement in force. The complainant could have sent his grievance to the final level of the grievance process once the time for replying at the lower level had expired. With the bargaining agent's support, he could also have filed a grievance alleging that the employer was not complying with the article of the collective agreement about the grievance process.

[10] In his complaint, the complainant also challenges his rejection on probation and asks the Board to rescind it. That issue cannot be the subject of a complaint with the Board under paragraphs 190(1)(e) and (g) or under any other provision of the *Act*. Therefore, I do not have jurisdiction to decide that issue in the context of this complaint.

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

(The Order appears on the next page)

Order

[12] The complaint is dismissed.

October 9, 2009.

PSLRB Translation

**Renaud Paquet,
Board Member**