

Date: 20091016

File: 561-34-390

Citation: 2009 PSLRB 132



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

NICOLE HÉROLD

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA AND DARIO GRITTI

Respondents

Indexed as

Hérolde v. Public Service Alliance of Canada and Gritti

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: Herself

For the Respondents: Nathalie St-Louis, Public Service Alliance of Canada

Decided on the basis of written submissions
filed May 15, June 2 and September 26, 2009.
(PSLRB Translation)

Complaint before the Board

[1] On April 30, 2009, Nicole Hérold (“the complainant”) made a complaint with the Public Service Labour Relations Board (“the Board”) against the Public Service Alliance of Canada and Dario Gritti (“the respondents”). The complainant based her complaint on paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the Act”), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22. The complainant criticizes the respondents for refusing to help her and to represent her with respect to a grievance that she wanted to file in 2007 against her employer at that time, the Canada Revenue Agency.

[2] In February 2007, the complainant wanted to file a grievance against her employer because she believed that she had been the victim of unfair treatment, discrimination and harassment. Mr. Gritti, the senior bargaining agent local representative at that time, did not act on her grievance. In August 2007, the complainant tried for a second time to file the grievance that could not be filed in February. At that time, Mr. Gritti refused to support and to act on the grievance. In September 2007, Mr. Gritti wrote to the complainant to explain the reasons for his decision.

[3] The complainant filed several documents with the Board about problems she was experiencing with her employer and about her efforts to obtain help from the bargaining agent local to file a grievance. The documents date from 2006 and 2007.

[4] The complainant also criticizes the respondents for not helping her in her disputes with several federal government bodies with respect to the garnishing of her wages and of her pension. According to the complainant, the garnishments were unjustified. They resulted from disputes between the complainant and government bodies over income tax, the goods and services tax and student loans.

[5] In the submitted documentation, the complainant does not indicate exactly when she approached the respondents for the help that she requested. However, in an email that she wrote on April 4, 2007, the complainant alleges that the garnishments began in 2005. However, the complainant states that she attempted to file a suit against the Canada Revenue Agency on January 14, 2009 with respect to the garnishments and that she did not obtain any assistance from the respondents in that suit.

[6] The complainant alleges that the respondents took the employer's side when she wanted to file a grievance for unfair treatment, discrimination and harassment, which she claims to have suffered in 2007. At that time, the respondents allegedly contravened paragraph 190(1)(g) of the *Act* and the provisions to which that paragraph refers. The complainant also refers to "[translation] sections 47.2 and following of the *Labour Code*."

[7] The complainant states in her complaint that she was not informed until February 27, 2009 that she could seek action against her bargaining agent by filing a complaint with the Board.

[8] The respondents allege that the grievances that the complainant wanted to file in 2007 would likely have perpetuated the situation that the complainant wanted to resolve. The respondents advised the complainant that she was free to file a grievance without the consent of the bargaining agent.

[9] The respondents acknowledge that the complainant approached them about the problems she was having with federal government bodies concerning amounts owing and the garnishment of wages. According to the respondents, there were relatively few, if any, avenues of intervention for such a matter.

[10] The respondents submit that the complainant has not proven that they violated the *Act* and that they acted in an arbitrary or discriminatory manner or in bad faith. Moreover, they claim that the complaint was made outside the 90-day time limit prescribed in subsection 190(2) of the *Act*. The complaint was made on April 30, 2009, and the alleged violations of the *Act* date back to 2007.

Reasons

[11] The complainant based her complaint on paragraph 190(1)(g) of the *Act*. That paragraph refers to section 185. It identifies several unfair labour practices, including failures in the duty of representation mentioned in section 187. Those provisions read as follows:

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.*

[12] The respondents claim that they did not violate those provisions of the *Act*. They further argue that the complaint is outside the time limit. Subsection 190(2) of the *Act* stipulates as follows that a complaint under subsection 190(1) must be made within 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.*

[13] The documents adduced by the complainant clearly show that she knew in 2007 that the respondents were refusing to help her or to represent her in her dispute at that time with her employer. Given that refusal, she had 90 days to make a complaint to the Board. The complaint was not made until April 30, 2009, meaning that it was not made within the 90-day time limit set by the *Act*.

[14] The complainant states that she did not learn until February 27, 2009 that she could make a complaint and, in her words, “[translation] seek action against her bargaining agent.” The complainant’s ignorance of the existence of her rights may not be invoked to set aside the time limits imposed by the *Act*. In *Panula v. Canada Revenue Agency and Bannon*, 2008 PSLRB 4, the Board concluded that the 90-day time limit prescribed by subsection 190(2) of the *Act* is mandatory. Furthermore, no provision of the *Act* gives the Board the power to extend the time limit. The only possible discretion for the Board relates to knowledge of the facts giving rise to the complaint, which does not apply in this case.

[15] Therefore, the part of the complaint dealing with the respondents' refusal to help the complainant or to represent her in the dispute against her employer in 2007 is dismissed because the complaint was not made within 90 days of the alleged actions of the respondents.

[16] The second part of the complaint refers to the complainant's disputes with federal government bodies concerning amounts owing and the garnishment of her wages. The disputes date back to 2005. It is not possible for me to determine, based on the documents adduced by the parties, exactly when the complainant made the final requests for assistance from the respondents. It would appear that the complainant requested, in vain, help from the respondents to file a suit, which she ultimately filed herself on January 14, 2009. Therefore, that refusal of assistance by the respondents had to have occurred before January 14, 2009, which is outside the 90-day time limit prescribed by the *Act*.

[17] However, even had I found that the second part of the complaint had been made within the 90-day time limit, I would dismiss the complaint. The respondents claim that their avenues of intervention were relatively few, if any, with respect to this type of matter. The respondents were fully within their rights to reach such a conclusion, which is not discriminatory or arbitrary and does not appear to me to indicate bad faith. The complainant's problems did not arise from employer-employee relations or from labour relations in which the respondents are normally required to intervene but rather from the complainant's citizen-government relations with government bodies.

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

(The Order appears on the next page)

Order

[19] The complaint is dismissed.

October 16, 2009.

PSLRB Translation

**Renaud Paquet,
Board Member**