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Public Service
Labour Relations Act

Before the Public Service
Labour Relations Board

BETWEEN

YVON LEROUX, YVON LACOMBE, MONIQUE DUSSEAULT, SERGE MAROIS, GUY BERLINGUETTE, PIERRE TALBOT, ODILE SAVARD AND PIERRE-PAUL LAPORTE

Complainants

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Leroux et al. v. Public Service Alliance of Canada

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

REASONS FOR DECISION

Before: Renaud Paquet, Board Member

For the Complainants: Yvon Lacombe

For the Respondent: Jacquie de Aguayo, Public Service Alliance of Canada

Decided on the basis of written submissions
filed July 22, 2008 and September 21, 2009.
(PSLRB Translation)

I. Complaints before the Board

[1] Between May 26, 2008 and July 7, 2008, Yvon Leroux, Yvon Lacombe, Monique Dusseault, Serge Marois, Guy Berlinguette, Pierre Talbot, Odile Savard and Pierre-Paul Laporte ("the complainants"), employed with the Correctional Service of Canada ("the employer"), made complaints against their bargaining agent, the Public Service Alliance of Canada ("the respondent") alleging that it had violated the provisions of section 187 of the *Public Service Labour Relations Act* ("the *Act*").

[2] In July 2001, after consulting with their bargaining agent representative, the complainants filed grievances about the employer's obligation that they remain at their workstations during breaks without any associated compensation. They requested that that system of availability be discontinued and that they receive financial compensation for the five years preceding the filing of their grievances. The grievance settlement process lasted several years. According to the complainants, the respondent's representatives indicated to them throughout the process that they had a "strong" case.

[3] The complainants indicated that, a few days before a mediation session in early June 2007, they discovered that they could claim financial compensation only for the 25 days preceding the grievances rather than for 5 years, as requested. They decided to turn down the offer that the employer tabled at mediation because they were convinced that their arguments were well founded and that they would be able to obtain compensation for the years after the grievances were filed.

[4] Following that refusal, the adjudication hearing was deferred to May 2008. At the end of April 2008, the complainants discovered that the employer was offering them $300 each as a final grievance settlement. According to the complainants, the offer was so low because their grievances had been poorly worded and had not requested any compensation. At the same time, the complainants found out that the respondent had forgotten to forward the grievances of Messrs. Laporte and Lacombe to the third level of the grievance process. Because of the respondent's omission, the grievances were deemed abandoned. Under the circumstances, the complainants decided to accept the employer's offer, which applied to every one of them, including Messrs. Laporte and Lacombe.

II. Summary of the arguments

[5] The complainants allege that the respondent was negligent because it provided them with incorrect information about the wording of their grievances, it failed to ensure the necessary follow up to the grievances and it forgot to transmit two of the grievances to the third level of the internal grievance process. The respondent's representatives also allowed the complainants to believe that, throughout the grievance process, they had a "strong" case, which was not so, given the grievances' wording.

[6] The complainants recognize that employees do not have an absolute right to adjudication, as indicated in *Gendron v. Supply & Services Union of the Public Service Alliance of Canada, Local 50057*, [1990] 1 S.C.R. 1298. However, in this case, they allege that the respondent did not exercise its discretion in good faith or honestly because it failed to conduct a serious review of the grievances and the file. Had such a review taken place, the respondent would have realized that the grievances were poorly worded, that no compensation was requested and that their claim could not be retroactive to more than 25 days before the grievances were filed. Moreover, the respondent was dishonest and negligent in allowing the complainants to believe that, for six years, they had a "strong" case.

[7] The complainants request that the Board order the respondent to pay them the amounts that they would have received had they been properly represented. The complainants explained that the amounts represent 157 hours of overtime and 180 meals at $12 per complainant.

[8] The respondent claims that the decision to settle the matter at the April 2008 mediation and to not pursue the grievances was not arbitrary or discriminatory and that it was not made in bad faith.

[9] The respondent also alleges that, even had the complainants proven that the respondent misled them, it would not constitute a breach of the respondent's duty of fair representation. On that point, the respondent refers to *Jakutavicius v. Public Service Alliance of Canada*, 2005 PSLRB 70. The allegation of oversight in forwarding the grievances of Messrs. Laporte and Lacombe is not pertinent because both were included in the final settlement reached in mediation.

[10] The respondent submits that the complainants did not demonstrate that it acted in a manner that was arbitrary, discriminatory or in bad faith. For that reason, the complaints should be dismissed.

III. Reasons

[11] From the complaints, there is no doubt that the complainants are dissatisfied with the outcomes of the grievances that they filed in 2001. Correctly or not, they claim that they could have received far more compensation that they ultimately did. The complainants attribute that failure to the respondent and its representatives at the different levels of the bargaining agent structure for the following reasons: poorly worded grievances, deficient expertise, inconsistent follow up and oversights in forwarding the grievances. According to them, all those regrettable incidents account for the failure.

[12] There is no need to reiterate the extensive case law in support of the importance of properly formulating a grievance from the outset, particularly since it is difficult to change a grievance's nature after referring it to adjudication (see, among others, *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.)). But I do not know whether the complainants' claims about the grievances' failures are true. What wording was used in the grievances? What wording should have been used so that the complainants would have won their cases? Is it really an issue of a poorly worded grievance? That is what the complainants claim, but nothing submitted to me convinces or dissuades me of that. It would have been necessary to first establish that the poor wording of the grievances was fatal to their outcomes and to then provide evidence supporting the argument that the respondents acted arbitrarily in advising the complainants on their grievances' wording.

[13] A bargaining agent's oversight in forwarding a grievance to the next level in the grievance process is equivalent to abandoning the grievance. It seems to me that the respondent's representatives did not perform their work properly in forgetting to forward the two complainants' grievances to the next level of the grievance process. However, that oversight, as the complainants themselves admit, had no impact because the two complainants received the same compensation as their colleagues through the mediated settlement of the grievances.

[14] Section 187 of the *Act* does not impose any obligation in terms of results or competence on a bargaining agent and its representatives. Even were the complainants to prove to me that their claims are true, it would not necessarily mean that I would allow their complaints. Instead, they would have to prove to me that the respondent acted in bad faith or in an arbitrary or discriminatory manner. The case law is clear on that point (see *Gendron* and *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509).

[15] In *Jakutavicius*, the Board found that the bargaining agent may commit errors without necessarily breaching the *Act*. However, if the errors, poor advice or omissions result from arbitrary — i.e., negligent or superficial — treatment of the situation raised by an employee, there may be an issue of a breach of the duty of fair representation under the *Act*. Certainly, the complainants allege that they were treated arbitrarily, but I am not convinced by the facts submitted to me. I am faced with an allegation for which I have not been provided evidence.

[16] Section 187 of the *Act* does not address the outcome or quality of the bargaining agent's input as long as it acts with diligence and not in a manner that is arbitrary, discriminatory or in bad faith.

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

(The Order appears on the next page)

IV. Order

[18] The complaints are dismissed.

October 20, 2009.

PSLRB Translation

Renaud Paquet,
Board Member