

Date: 20091022

File: 561-34-398

Citation: 2009 PSLRB 140



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

RAYMONDE DUBUC

Complainant

and

**PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA
AND PATRICK SIOUI**

Respondents

Indexed as

Dubuc v. Professional Institute of the Public Service of Canada and Sioui

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: [Geoffrey Grenville-Wood and Isabelle Roy, Professional Institute of the Public Service of Canada](#)

Decided on the basis of written submissions
filed June 25, July 23, August 14 and September 30, 2009.
(PSLRB Translation)

Complaint before the Board

[1] Raymonde Dubuc (“the complainant”) was an employee of the Canada Revenue Agency (“the employer”) until she retired on December 29, 2008. On June 1, 2009, she filed a complaint against her bargaining agent, the Professional Institute of the Public Service of Canada (PIPSC), and Patrick Sioui, a PIPSC representative (“the respondents”). The complaint is based on paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the *Act*”), which refers to section 185. The complainant alleges that the respondents did not properly represent her and that, therefore, they breached their duty of representation. 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

...

(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.

...

[2] Between 2001 and 2006, the complainant was absent from work several times because of a lengthy illness. She returned to work gradually following the absences. According to the complainant, the employer informed her in September 2006 that it had overpaid her salary between 2001 and 2006. In 2008, the employer allegedly asked her to reimburse overpayments for sick leave and annual leave. According to the complainant, those overpayments amount to \$37,840.

[3] The complainant claims that she started contacting Mr. Sioui in 2006 for help with her problems with the employer. In September 2006, she authorized him in writing to represent her with the employer because she was off sick. Since the overpayments dispute had not yet been settled, the complainant wrote to Mr. Sioui on December 1, 2008 to ask him to let her know within 10 days of his planned approach for her file. In her complaint, the complainant stated that she had seen a lawyer on November 26, 2008 and that he had advised her to write to the respondents and to make a complaint against them if they refused to act on her requests. The complainant alleges that Mr. Sioui never replied to her letter of December 1, 2008. However, she states that he called her on December 2, 2008 to inform her that he was meeting with a lawyer the next day and that he would contact her in the following days to confirm a possible meeting with the lawyer on December 8, 2008. Since she did not hear from Mr. Sioui again, she left him a telephone message on December 11, 2008.

[4] On December 15, 2008, the complainant wrote to the employer to inform it that she would be retiring on December 29, 2008 and to reiterate her disagreement with the claimed overpayments. She sent a copy of that letter to Mr. Sioui. On March 9, 2009, the employer wrote to the complainant to give her a breakdown of the amounts owed and those already reimbursed.

[5] On February 10, 2009, the complainant called Mr. Sioui, who allegedly told her that he had been absent from work but that he had looked after her file anyway. He allegedly also told her that he was not sure that he could handle her file because she had not paid her dues to her bargaining agent despite being sent reminder letters. The complainant claims that Mr. Sioui told her that he would call her back about the matter but that he never did.

[6] Essentially, the complainant criticizes Mr. Sioui for not looking after her file, not always replying to her in due time and not giving her all the information that he possessed.

[7] The respondents allege that they never acted in a manner that was arbitrary, discriminatory or in bad faith in representing the complainant. They submit that Mr. Sioui vigorously represented the complainant starting in 2006. He discussed the question of the claimed overpayments many times with the employer and the complainant between 2006 and 2008. He also advised the complainant to delay her retirement until February 2009 so that he could try to resolve the overpayment

problem. The respondents also explain that Mr. Sioui had health problems in December 2008, was hospitalized on December 5, 2008 and did not return to work until mid-January 2009. During that period, the complainant allegedly did not try to contact other PIPSC representatives.

[8] The respondents argue that the complaint was filed after the 90-day time limit set out in subsection 190(2) of the *Act*. The case law has established that that time limit is mandatory (see *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, and *Panula v. Canada Revenue Agency and Bannon*, 2008 PSLRB 4). The respondents submit that the complainant cannot rely on the employer's letter of March 9, 2009 to calculate the 90-day time limit for filing her complaint.

[9] The respondents also argue that the complainant had no longer been an employee for more than 90 days by the time she filed her complaint. She retired on December 29, 2008, and, on June 1, 2009, the Public Service Labour Relations Board ("the Board") received her complaint dated May 28, 2009.

Reasons

[10] Even were I to recognize the complainant's employee status, I would dismiss her complaint because it was filed too late. It was filed on June 1, 2009. Therefore, it can refer only to facts that the complainant ought to have known during the previous 90 days, that is, after March 1, 2009. I agree completely with the Board's conclusions in *Castonguay* and *Panula* that the 90-day time limit is mandatory. Subsection 190(2) of the *Act* reads as follows:

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.

[11] Only one of the facts that the complainant referred to happened after March 1, 2009, namely, the letter that the employer sent her on March 9, 2009 providing a breakdown of the amounts owed and those already reimbursed. Nothing in the file indicates that the respondents received a copy of that letter or that the complainant contacted them about it. Of course, the complainant is not satisfied with the content of the letter, which refers to the overpayment calculations, but she cannot blame the respondents since the employer sent the letter.

[12] The March 9 letter was only one of several events that occurred during the dispute that began in 2006 between the complainant and the employer on the question of overpayments. The respondents claim that they tried to help the complainant throughout the dispute. If she thought that they had violated their duty of representation, she could have filed a complaint within 90 days after a specific violation, but she did not. In her complaint, she stated that she had sought an opinion from a lawyer on November 26, 2008 and that the lawyer had advised her to write to the respondents and to make a complaint against them if they did not act on her letter. Since there was no reply to the letter in question, which was dated December 1, 2008, the complainant should have filed a complaint then with the Board, but she did not. Instead, she waited until June 1, 2009.

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

(The Order appears on the next page)

Order

[14] The complaint is dismissed.

October 22, 2009.

**Renaud Paquet,
Board Member**