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Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

RAYNALD GIGNAC

Complainant

and

SIMON FRADETTE

Respondent

Indexed as
Gignac v. Fradette

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: Bernard Gagné

For the Respondent: Martin Desmeules, counsel

Heard at Quebec, Quebec,
January 6 and 7, 2009.
(PSLRB Translation)

I. Complaint before the Board

[1] On February 5, 2008, Raynald Gignac ("the complainant") filed an unfair labour practice complaint against Simon Fradette ("the respondent") with the Public Service Labour Relations Board ("the Board") under paragraph 190(1)(*g*) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 ("the *Act*"). The complainant alleges that certain actions or decisions by the respondent constitute unfair labour practices within the meaning of section 185 of the *Act*.

[2] The complainant is a production chief at the AS-04 group and level at the Quebec Production Centre (QPC) of Public Works and Government Services Canada (PWGSC). The QPC is one of three print centres for cheques issued by the federal government. As a production chief, the complainant was a member of the QPC management committee. At the time of the incidents giving rise to the complaint, he was also the president of the union local, which covered most QPC employees. At that time, he also held the position of Manager of the QPC on an acting basis on several occasions. According to the complainant, the respondent was the manager responsible for the QPC during the first part of the period at issue and the director of PWGSC's National Print Portfolio for the second part of the period. In those positions, he was the complainant's superior.

[3] In his complaint, the complainant alleges that the respondent

- made comments that his supervisory role and his union involvement were contradictory;
- implied that his union involvement eliminated his chances of being considered for the position of QPC Manager for which he had applied;
- unfairly called him to a disciplinary meeting after a discussion that took place at a Christmas party in November 2007; and
- threatened him with disciplinary action for being at the office while he was on sick leave.

[4] At the hearing, the complainant added that he was also complaining that the respondent treated him differently from the normal practice when his daughter came to the QPC and used his computer equipment for personal purposes. Finally, the

complainant alleges that the respondent took measures to have the complainant's position deemed a management position so that he could no longer be a member of the union and, by that fact, so that he would be unable to continue to perform his union duties.

[5] Therefore, the question before me is to determine whether the respondent committed the alleged acts and, for any acts that were committed, whether they constitute unfair labour practices within the meaning of section 185 of the *Act*.

II. Summary of the evidence

[6] The parties adduced 15 documents in evidence. The respondent and the complainant testified. The complainant also called as witnesses Pierre Parent, Claude Pelletier and Denis Matte. Mr. Parent is Supply Team Leader for the PWGSC at the Gare maritime Champlain in Quebec. Mr. Parent is a member of management and, as such, is not a unionized employee. Mr. Pelletier works at the QPC and is a union representative. Mr. Matte worked as a production chief at the QPC until his retirement in July 2008. Like the complainant and the respondent, Mr. Matte was a member of the QPC's management committee.

[7] The complainant's first complaint against the respondent concerns comments that the respondent allegedly made about the complainant's dual role of supervisor and union representative. The complainant claims that the respondent apparently told him in a friendly manner that his colleagues felt that he was wearing too many hats, referring to his dual role. Mr. Matte mentioned his discomfort with the complainant's dual role on several occasions during management committee meetings. He recalls several arguments that he had with the complainant on that topic. Mr. Matte criticized the respondent for never taking a stand on the matter either during or outside of the meetings. The respondent confirmed during his testimony that Mr. Matte had expressed discomfort about the complainant's dual role. He added that the other section chiefs also spoke to him about the problem. The respondent also admitted that he had never taken a position on the issue of the complainant's dual role because he believed that, as manager, he did not have the right.

[8] The complainant's second complaint against the respondent concerns a comment that the respondent allegedly made in Mr. Parent's presence just before a videoconference meeting held in June or July 2007. At that time, PWGSC management

was holding a competition to permanently fill the position of QPC Manager, left vacant by the respondent's promotion. The respondent was a member of the selection board, and the complainant was one of the candidates. Before the videoconference, Mr. Parent and Mr. Gignac were discussing their professional futures. According to their testimonies, when the respondent arrived in the room, he joined their discussion and apparently mentioned to the complainant that he should focus more on his production chief duties. The complainant became very upset on hearing that comment. Mr. Parent found the comment unusual given that the complainant was a candidate in the competition for QPC manager and the respondent was a member of the selection board. According to the respondent, his comment was not related to the competition but rather to the discussion between Mr. Parent and the complainant about their retirement plans.

[9] The complainant's third complaint against the respondent relates to a disciplinary interview on January 14, 2008. That interview followed from the complainant's behaviour or attitude toward the respondent during the QPC's Christmas party on November 30, 2007. In his capacity as union representative, the complainant had brought certain problems to the respondent's attention. The complainant claims that he spoke loudly because of the noise in the room and that the discussion was respectful. For his part, the respondent believes that it was a one-sided discussion during which the complainant was aggressive and threatening toward him. The respondent contacted PWGSC labour relations specialists, seeking advice on how to deal with the situation. On January 10, 2008, the respondent called the complainant to a disciplinary interview, which was held on January 14, 2008. No disciplinary action followed the meeting. A disciplinary interview report was prepared but was never completed or issued because, according to the respondent, the complainant filed this complaint with the Board and also filed a grievance. Therefore, the matter is still pending.

[10] The complainant's fourth complaint against the respondent is that the respondent threatened him with disciplinary action for being at the office when he was on sick leave. The complainant claims that in December 2007, while on sick leave, he went to the QPC to get or to drop off a leave form. The QPC manager at that time, Claire Drolet, allegedly threatened him with disciplinary action because he was at work while on sick leave. The respondent remembers having seen the complainant at the QPC on that occasion but says that he never threatened him with disciplinary action as

a result of the incident. Moreover, the manager at that time did not mention anything to him about it.

[11] The fifth incident alleged against the respondent relates to the visit of the complainant's daughter to the QPC. The complainant explained that his daughter was looking for a job with the federal government. The respondent had earlier given the complainant some relevant hyperlinks to consult. In early November 2007, the complainant's daughter went to the QPC while the complainant was on leave. QPC employees allowed her to walk around freely. She went to the complainant's workstation and used his computer equipment to access electronic documents and addresses useful in applying for a position. She then left the QPC. The respondent asked Mr. Matte, who was the acting manager, if it was normal that people who were not QPC employees would walk freely in the QPC and use employee workstations. Mr. Matte told him that it was common for people whom employees knew well and that there was no cause for concern.

[12] The respondent was very surprised by Mr. Matte's answer about the visit of the complainant's daughter. He decided to contact the PWGSC's security section, which then conducted an investigation. The investigation report recommended that a training session be organized for all employees to make them aware of security issues so that there would be no further incidents of this nature. The complainant and Mr. Matte believe that the respondent applied a double standard because there were much more serious security issues on which he did not act. Indeed, when the QPC's new facilities were being fitted out in mid-November 2007, several construction company employees had circulated freely and without monitoring within the QPC. Mr. Matte considered that to be a serious security problem. He pointed it out to the respondent and claims that he did nothing. The respondent stated that he spoke to the employee coordinating the construction work so that measures would be taken.

[13] The complainant's sixth complaint against the respondent concerns the proposal to exclude the complainant's position from the bargaining unit. With no prior consultation, PWGSC management informed the complainant in summer 2008 that the employer proposed excluding his position given that it was to be, from then on, the first level of the grievance process for the 15 employees he supervised. On July 31, 2008, the complainant received a letter from the Public Service Alliance of Canada (PSAC) requesting that he discontinue all work as a union representative

because of the proposed exclusion. On September 5, 2008, the PSAC objected to the proposal. The complainant attributed the exclusion to the respondent. For his part, the respondent claimed that he had nothing to do with the proposal, which came from PWGSC senior management, and that it applied to all production chiefs at the three cheque printing centres, including the QPC.

[14] The parties also adduced evidence on the policy for replacing the QPC manager, on management practices about hiring people for less than 90 days, on meetings of the union-management committee and on the complainant's post-interview, which took place after the competition for the QPC manager position. I will not describe this evidence in detail because it is not relevant to the matter that I must decide nor to the allegations made by the parties.

III. Summary of the arguments

A. For the respondent

[15] At the start of the hearing, the respondent, referring to subsection 191(2) of the *Act*, asked the Board to refuse to rule on the complaint given that the complainant could have used the grievance process to raise his concerns, and indeed, he had done so. The grievance was denied at each level of the internal grievance process, and the PSAC refused to refer it to adjudication. The complainant also filed a complaint with the Public Service Staffing Tribunal with respect to certain allegations and a harassment complaint on others. Thus, there are several courses of remedy being sought for the same incidents.

[16] Given the lack of clarity of the complainant's allegations, the respondent asked that the complainant be the first to adduce evidence so that the respondent could know of what he was accused so that he could defend himself. In addition, it was uncertain whether the burden of proof was on the respondent, as set out in subsection 191(3) of the *Act* because it is necessary first for the complainant to establish an arguable case. In that regard, the respondent referred me to the following decisions: *Quadrini v. Canada Revenue Agency and Hillier*, 2008 PSLRB 37; *Lamarche v. Marceau*, 2005 PSLRB 153; *Perka et al. v. Department of Transport and Treasury Board*, 2007 PSLRB 92; and *Laplante v. Treasury Board (Industry Canada and the Communications Research Centre),* 2007 PSLRB 95.

[17] The respondent claimed that many of the alleged incidents took place outside the 90-day period prescribed in subsection 190(2) of the *Act*. The complaint was filed in early February 2008. The complainant was aware of incidents that occurred before November 2007. He had 90 days to file a complaint, which he did not do. The Board may not rule on allegations based on incidents that occurred more than 90 days before the complaint was filed.

[18] Nothing in the evidence adduced supports the claim that the respondent apparently made certain negative comments about the complainant's dual role. That allegation is unfounded. As for the respondent's comments that the complainant should concentrate on his work as production chief, they were not made in the context of a discussion about the competition to fill the position of QPC Manager but, rather, in a completely different context.

[19] Being called to the disciplinary interview on January 14, 2008 had nothing to do with the complainant's role as a union representative. It concerned the complainant's aggressive and threatening tone toward the respondent during the November 30, 2007 Christmas party.

[20] The respondent did not threaten the complainant concerning his presence at the office in December 2007 while on sick leave. The only evidence that the complainant adduced indicates that Ms. Drolet, the manager at that time, allegedly commented to him.

[21] The respondent acknowledged that a security investigation was conducted following the complainant's daughter visiting the QPC. It had nothing to do with the complainant being a union representative.

[22] Finally, excluding production chiefs from the bargaining unit is a national initiative. The decision to assign responsibility for the first level of the grievance process to production chiefs is a national decision applying to all production chiefs across the country. The respondent did not make that decision.

B. For the complainant

[23] The complainant agreed with the respondent's suggestion that it was logical for the complainant to adduce his evidence first so that the respondent would have a more accurate idea of the complaints against him.

[24] The complainant acknowledged that he had exercised more than one remedy in response to the respondent's actions. A grievance was filed as well as a complaint to the Public Service Staffing Tribunal and a harassment complaint. However, the PSAC refused to refer the grievance to adjudication.

[25] The complainant acknowledged that some of the alleged facts occurred before the 90-day time limit set out in the *Act*. However, it is important to consider those facts to understand the incidents that occurred within the 90-day time limit. The incidents are fully understood only in that context.

[26] The underlying reason for this complaint is that the respondent never accepted that the complainant was both a supervisor and a union representative. The respondent should have taken a position in the management committee when the complainant's dual role was discussed. He never did. Ultimately, management suggested excluding his position from the bargaining unit.

[27] The complainant is an employee who has worked hard throughout his career. He went through some difficult personal times, and at the same time, management attacked him. He no longer feels appreciated by his employer.

[28] Following the discussion between the complainant and the respondent at the November 2007 Christmas party, the respondent called the complainant to a disciplinary meeting. No report was submitted following the interview. The matter is still pending.

IV. Reasons

[29] To determine the merits of the complaint and to address the arguments adduced by the parties, I must rely on the following provisions of the *Act*:

. . .

> ***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).*
>
> . . .
>
> ***186.****(2) Neither the employer nor a person acting on behalf of the employer, nor a person who occupies a managerial or confidential position, whether or not that person is acting on behalf of the employer, shall*
>
> > (a) *refuse to employ or to continue to employ, or suspend, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person:*
> >
> > > *(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,*
> >
> > . . .
>
> ***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.*
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> . . .
>
> ***191****. (2) The Board may refuse to determine a complaint made under subsection 190(1) in respect of a matter that, in the Board's opinion, could be referred to adjudication under Part 2 by the complainant.*
>
> *(3) If a complaint is made in writing under subsection 190(1) in respect of an alleged failure by the employer or any person acting on behalf of the employer to comply with subsection 186(2), the written complaint is itself evidence that the failure actually occurred and, if any party to the complaint proceedings alleges that the failure did not occur, the burden of proving that it did not is on that party.*
>
> . . .

[30] The respondent asked the Board to refuse to rule on the complaint by exercising its discretionary power under subsection 191(2) of the *Act*. I do not share the

respondent's opinion, and I agree to rule on some of the allegations that are part of the complaint. It is true that the complainant exercised other remedies, but a third party has not had an opportunity to rule on the claims of unfair labour practice. These are very serious allegations. Deciding them is certainly within the Board's mandate. The Board must, among other things, ensure that the union freedoms set out in the *Act* can be exercised with impunity.

[31] The complainant met his initial burden of proof by demonstrating that part of the facts alleged against the respondent actually occurred. The burden of proof is therefore reversed, and it is the respondent's responsibility to prove that those facts do not constitute unfair labour practices within the meaning of the *Act* and, more specifically, within the meaning of its subparagraph 186(2)(*a*)(i). Among other things, there is no question that the complainant was called to a disciplinary interview in January 2008, that there was controversy within the management committee about his dual role and that a security investigation took place into his daughter's presence at the QPC. What remains to be determined is whether those incidents are unfair labour practices.

[32] Despite this, I agreed to have the complainant adduce his evidence first to allow the respondent a full defence. It would have been illogical to proceed otherwise given that the respondent needed to know exactly of what he was accused before presenting his defence.

[33] The respondent argued that a number of the facts alleged against him took place before the 90-day time limit set out in subsection 190(2) of the *Act* and that, therefore, I cannot decide whether those facts are unfair labour practices. I agree with that argument. Thus, I will not rule on the question of whether the respondent's comments in June or July 2007 to the complainant related to the competition to fill the manager position at the QPC constitute an unfair labour practice. The 90-day time limit set out in subsection 190(2) is mandatory and must be respected. On that, my decision reflects past Board decisions, such as in *Walters v. Public Service Alliance of Canada*, 2008 PSLRB 106.

[34] Furthermore, I will also not rule on the question of whether the proposal to exclude the complainant's position from the bargaining unit constitutes an unfair labour practice because the exclusion process began several months after the complaint was filed.

[35] The evidence showed that the complainant's dual role caused a problem for his colleagues, especially for Mr. Matte. He was entitled to his opinions on the matter, and he expressed them on numerous occasions. However, such was not the case with the respondent. Indeed, the complainant criticizes the respondent for not wanting to take an open position on the matter. At worst, the respondent allegedly told the complainant that some of his colleagues had a problem with his dual role. That is not an unfair labour practice within the meaning of the *Act*. The respondent never told the complainant that his dual role was a problem for the respondent. Nor did the respondent take Mr. Matte's side when he mentioned the problems that the complainant's dual role was causing. By his silence, the respondent definitely did not contravene the *Act*.

[36] The evidence also revealed that the complainant was called to a disciplinary interview on January 14, 2008. The interview was the result of a discussion between the complainant and the respondent at the November 30, 2007 Christmas party. The complainant stated that he was respectful toward the respondent, while the respondent claimed that the complainant was aggressive and threatening. Based on the testimony, I do not know who is telling the truth. It was certainly a lively and intense discussion. It is possible that the respondent felt threatened even though the complainant had no intention of threatening him. Regardless, I do not believe that the respondent decided to hold the disciplinary interview because the complainant was a union representative but, rather, because he felt, rightly or wrongly, that such behaviour by an employee was unacceptable. Accordingly, the respondent's actions during the incident are not an unfair labour practice within the meaning of the *Act* because the evidence convinces me that there is no connection between the disciplinary interview and the complainant's union role.

[37] However, I cannot overlook the fact that, more than a year after the November 30, 2007 incident, the respondent and PWGSC management have still not decided whether they will take disciplinary action against the complainant on the pretext that the complainant had filed a complaint with the Board. I am concerned about this approach because disciplinary action should be taken as soon as possible after an incident. The fact that an individual files a complaint with the Board does not in any way alter the rights, duties and obligations of an employer in this area. The employer must act in accordance with the rules established by the jurisprudence.

[38] In evidence relating to the allegation of threats of disciplinary action made by Ms. Drolet when the complainant visited the office while he was on sick leave, the respondent replied that he was not aware of the threats and that, for his part, he had not made any. I accept the respondent's reply, and I believe that he had nothing to do with the incident. If such threats were made, they are unfortunate and the result of a blatant lack of judgment by the manager in question.

[39] The complainant's last allegation concerns the PWGSC security section's investigation after his daughter visited the QPC. I accept the respondent's explanation that he did not think it normal that a person not working for the QPC could circulate freely within the facility and, all alone, use an employee's computer equipment. No disciplinary action was taken against the complainant concerning that incident. Instead, it was decided to offer all employees an awareness session on the issue to avoid a repeat of the situation. That is certainly not an unfair labour practice within the meaning of the *Act*. It is true that the respondent acted differently when Mr. Matte informed him of security problems related to employees of the contractors in charge of renovations. In that instance, the respondent decided to handle the problem internally, as he was fully entitled to in exercising his management responsibilities. He also had the right to manage a situation differently involving someone directly related to an employee. There is no evidence that the respondent acted as he did because the complainant held a position as a union representative.

[40] In summary, the respondent proved that the actions for which the allegations against him were filed do not constitute unfair labour practices within the meaning of the *Act*.

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

(The Order appears on the next page)

V. Order

[42] The complaint is dismissed.

February 6, 2009.

PSLRB Translation

Renaud Paquet,
Board Member