

Date: 20090325

File: 561-02-80

Citation: 2009 PSLRB 38



*Public Service  
Staff Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**SIMON CLOUTIER**

Complainant

and

**TREASURY BOARD**

**(Department of Citizenship and Immigration),**

**DIANNE CLÉMENT, SYLVIE MAZIADÉ, CAROLE LAHAIE, JOSÉE CARON, DOMINIC  
NADEAU, LISE RICARD AND LORRAINE FRIGON**

Respondents

Indexed as

*Cloutier v. Treasury Board (Department of Citizenship and Immigration) et al.*

In the matter of a complaint made under section 23 of the *Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** John A. Mooney, Board Member

***For the Complainant:*** Himself

***For the Respondents:*** Nadia Hudon and Nadine Perron, counsel

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Heard at Montreal, Quebec,  
February 9, 2009.  
(PSLRB Translation)

**Complaint before the Board**

[1] Simon Cloutier (“the complainant”) worked for the Department of Citizenship and Immigration until being dismissed on July 8, 2003. On February 12, 2004, he sent an email to the Public Service Staff Relations Board (“the former Board”) that, among other things, stated that he attached an unfair labour practice complaint made under section 23 of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (“the former Act”):

[Translation]

...

*As well, attached you will find a third complaint under section 23 against the Department of Citizenship and Immigration. We request that the Board set hearing dates as soon as possible.*

...

However, nothing was attached to the complainant’s email. Therefore, the former Board’s registry asked him to send the document as well as the form required under section 14 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (SOR/93-348). The complainant sent the Board a form dated February 25, 2004, as well as a seven-page document setting out the reasons for his complaint. The form indicates that the complaint is being made under paragraph 23(1)(a) of the former *Act*. In the document accompanying the form, the complainant asserts that, among other things, the respondents intimidated him and refused to grant him leave to prepare a grievance that he had referred to adjudication.

[2] A date for the hearing of this complaint was set but was postponed at the respondents’ request. The parties were consulted about new hearing dates and confirmed that they were available on February 9, 10 and 11, 2009. On November 14, 2008, the registry of the Public Service Labour Relations Board (“the Board”) confirmed the hearing dates.

[3] On January 12, 2009, the Board’s registry sent a notice of hearing to the parties by Priority Post. The notice clearly indicates that the hearing of this complaint would begin in Montreal on February 9, 2009 at 13:00 and that it would continue on the following day at 09:30 and on the next day at 09:30. The notice reads as follows:

[Translation]

...

*PLEASE ALSO NOTE that, if you fail to appear at the hearing or at any subsequent continuation of the hearing, the Board may rule on the matter based on the evidence and submissions adduced before it at that time, without providing you with further notice.*

...

[4] A Canada Post receipt indicates that on January 13, 2009, a person other than the complainant accepted delivery of the notice of hearing on his behalf.

[5] In letters dated November 4, 2005, December 11, 2008, and January 13, 2009, the respondents raised various preliminary issues, including the Board's jurisdiction to hear this complaint. On January 28, 2009, the Board responded to the parties that it would hear their arguments on the preliminary issues at the hearing already scheduled for this complaint.

[6] On January 13, 2009, by email, the complainant asked the Board to postpone the hearing of his complaint, without indicating a reason.

[7] On January 16, 2009, the respondents objected to the request for postponement, noting that the complainant did not indicate why he had asked for a postponement of the hearing.

[8] On January 19, 2009, the Board asked the complainant why he requested a postponement of the hearing. In a January 22, 2009 email, the complainant responded as follows:

[Translation]

...

*In response to your question, since I am registered in a doctorate program in sociology, the reasons are related to the organization of my work this semester, which began last January 8 and to the deadlines that I must meet as part of this work.*

...

[9] On January 23, 2009, by registered mail, the Board responded to the

complainant that it refused his request for a postponement of the hearing. The complainant received the letter on January 26, 2009, as shown by his signature on the Canada Post delivery receipt.

[10] On February 9, 2009, I was present at 13:00 at the location indicated on the notice of hearing. The respondents' representatives were present, as were their witnesses. The complainant did not attend the hearing. I contacted the Board's registry to ascertain whether the complainant had informed it that he would be absent or delayed. The complainant had not contacted the registry. I waited for the complainant until 14:00. He did not appear. The respondents' representatives asked me to dismiss the complaint because the complainant did not attend the hearing in its support. I informed the respondents' representatives that I would adjourn the hearing and take the entire matter under consideration.

[11] The complainant never contacted the Board's registry to explain his absence on February 9, 2009.

### **Reasons**

[12] The complainant made an unfair labour practice complaint under paragraph 23(1)(a) of the former *Act*. In the document accompanying the complaint form, he asserts that, among other things, the respondents intimidated him and refused to grant him leave to prepare a grievance that he had referred to adjudication. The hearing for his complaint had been set for February 9 to 11, 2009. He had been consulted and notified of the hearing date and time. The Canada Post delivery receipt shows that a person acknowledged receipt of the notice of hearing on the complainant's behalf. He then requested a postponement of the hearing because he wished to concentrate on his doctoral studies. On January 23, 2009, the Board refused the request for postponement. On January 26, 2009, the complainant was informed of the refusal as shown by his signature on the Canada Post delivery receipt.

[13] The notice of hearing clearly indicates that the Board will proceed in the complainant's absence if he does not attend the hearing. The complainant did not notify either the Board or the respondents that he did not intend to attend the hearing. Since the complainant did not attend the hearing to adduce his evidence in support of his complaint, I have no choice but to dismiss his complaint, given the absence of evidence in support of his complaint. It is true that the complainant attached a

seven-page document to his complaint form, but the document constitutes hearsay, and I cannot accept that the facts described in it are true since the respondents were unable to cross-examine the complainant on the facts' veracity. Accepting that the complainant's document accurately describes the facts he relates without giving the respondents an opportunity to cross-examine the complainant about those facts would violate the respondents' rights to procedural fairness.

[14] The respondents had also raised various preliminary issues. I will not address those issues, having decided to dismiss the complaint because the complainant did not attend the hearing to adduce his evidence and arguments in support of his complaint.

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

*(The Order appears on the next page)*

**Order**

[16] The complaint is dismissed.

March 25, 2009.

PSLRB Translation

**John A. Mooney,  
Board Member**