

Date: 20090806

File: 561-02-162

Citation: 2009 PSLRB 95



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

MAHALINGAM SINGARAVELU

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Singaravelu v. Public Service Alliance of Canada

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

REASONS FOR DECISION

Before: [John A. Mooney, Board Member](#)

For the Complainant: [Yavar Hameed, counsel](#)

For the Respondent: [Ray Domeij, Public Service Alliance of Canada](#)

Heard at Kingston, Ontario,
July 28, 2009.

REASONS FOR DECISION

Complaint before the Board

[1] Mahalingam Singaravelu (“the complainant”) filed an unfair labour practice complaint under paragraph 190(1)(g) of the *Public Service Labour Relations Act* on May 7, 2007. He alleged that the Public Service Alliance of Canada (“the respondent”) had treated him in an arbitrary and discriminatory manner in relation to several workplace issues.

[2] The parties first elected for mediation, but it was cancelled on short notice. A teleconference was then held on February 1, 2008 to discuss procedural issues. The hearing originally scheduled for February 25 to 27, 2009 was postponed at the complainant’s request. The parties later indicated that they were not available for a hearing before July 28 to 31, 2009.

[3] By email dated February 10, 2009, the complainant’s counsel, Yavar Hameed, confirmed that the complainant was ready to proceed on July 28 to 31, 2009. By email dated February 11, 2009, the Public Service Labour Relations Board’s registry (“the registry”) confirmed that the hearing was scheduled for July 28 to 31, 2009.

[4] On June 24, 2009, the registry sent a notice of hearing Mr. Hameed by Priority Post. The notice clearly indicated that the hearing of this complaint would begin in Kingston on July 28, 2009 at 09:30 and that it would continue until July 31. The notice read in part as follows:

...

AND FURTHER TAKE NOTICE that if you fail to attend the hearing or any continuation thereof, the Board may dispose of the matter on the evidence and representations placed at the hearing without further notice to you.

...

[Emphasis in the original]

[5] A Canada Post receipt on file indicates that, on June 25, 2009, K. Elgazzar, at the legal firm representing the complainant, accepted delivery of the notice of hearing.

Hearing

[6] On July 28, 2009, I started the hearing at 09:30 at the location indicated on the notice of hearing. The respondent’s representative was present, as were its witnesses.

However, neither the complainant nor Mr. Hameed were present. I contacted the registry to ascertain whether the complainant or Mr. Hameed had informed it that they would be absent or delayed. Neither the complainant nor Mr. Hameed had contacted the registry in that regard. The registry tried to contact Mr. Hameed by calling his firm in Ottawa. The person that answered the phone indicated that Mr. Hameed was not present and that he could not be reached. I waited for the complainant and Mr. Hameed until 11:10. Neither attended the hearing.

[7] The respondent's representative stated that the complainant's allegations were unfounded. He asked me to dismiss the complaint because the complainant did not attend the hearing to support his complaint. I informed the respondent's representative that I would take the entire matter under consideration.

[8] The complainant and Mr. Hameed have not contacted the registry to explain their absence on July 28, 2009.

Reasons

[9] The notice of hearing sent to Mr. Hameed on June 24, 2009 clearly indicated that the Board would proceed in the complainant's absence if he did not attend the hearing. By email dated February 10, 2009, the complainant's counsel, Yavar Hameed, confirmed that the complainant was ready to proceed on July 28 to 31, 2009. Neither the complainant nor Mr. Hameed notified the registry or the respondent that they did not intend to attend the hearing. Since the complainant and Mr. Hameed did not attend the hearing to adduce evidence in support of the complaint, I have no choice but to dismiss the complaint, given the absence of evidence in support of it. It is true that the complainant described his complaint in the complaint form and that he gave further details in a six-page document attached to his complaint form, but the document constitutes hearsay, and I cannot accept that the facts described in it are true since the respondent was unable to cross-examine the complainant on the facts. Accepting that the complainant's document accurately described the facts that he related in his complaint form, without giving the respondent an opportunity to cross-examine the complainant about those facts, would violate the respondent's right to procedural fairness.

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

(The Order appears on the next page)

Order

[11] The complaint is dismissed.

August 6, 2009

**John A. Mooney,
Board Member**