

Date: 20100128

File: 561-02-410

Citation: 2010 PSLRB 16



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

GWEN ANNE WARREN

Complainant

and

CORRECTIONAL SERVICE OF CANADA

Respondent

Indexed as

Warren v. Correctional Service of Canada

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 Respondent: [Maureen Harris, Treasury Board Secretariat](#)

Decided on the basis of written submissions
filed November 13, 24 and 27, 2009, and January 6, 2010.

REASONS FOR DECISION

Complaint before the Board

[1] On October 9, 2009, Gwen Anne Warren (“the complainant”) filed a complaint with the Public Service Labour Relations Board (“the Board”) against the Correctional Service of Canada (CSC) (“the respondent”) under paragraph 190(1)(g) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 (“the Act”). The complainant alleged that the respondent had committed an unfair labour practice within the meaning of section 185 of the Act.

Summary of the complainant’s submission

[2] In 1986, the complainant was working for the CSC at Millhaven Institution. The complainant occupied the position of Office Services Supervisor, classified at the CR-04 group and level. On November 4, 1986, the CSC informed the complainant that her position had been identified as surplus to its requirements, effective November 13, 1986. The complainant challenged the CSC’s decision alleging that the decision was not made according to a reverse order of merit assessment. The complainant also challenged the CSC’s decision to not consider her for an acting appointment at the CR-05 group and level in February 1987 and later challenged the decision to not permanently appoint her to that position.

[3] To avoid a layoff, the complainant accepted, on December 15, 1986, a voluntary demotion to a position at the GS-STS-04 group and level. The demotion resulted in longer hours with less pay after the salary protection period expired. According to the complainant, she was left in a poisonous work environment with no available recourse. She began facing serious health issues, but she trusted that her bargaining agent representatives and the CSC would take corrective action. Neither did. The complainant suffered a work injury in May 1989 and resigned in June 1989 with a permanent disability.

[4] The complainant argued that the CSC treated her in the way they did because she rebutted her manager’s comments and assessments in her performance appraisal of October 1986.

[5] In August 2008, the complainant consulted Ken Veley, a retired bargaining agent representative, to try to get some justice. Mr. Veley helped the complainant to prepare an access to information request for everything in her files at the CSC and at the Public

Service Commission, where she had filed a complaint. On reviewing the documents, the complainant realized the wrong that had been done to her.

[6] On February 25, 2009, the complainant and Mr. Veley wrote to Don Head, Commissioner of the CSC, explaining her issues and asking for a meeting to discuss her case. Mr. Head agreed to meet with the complainant and Mr. Veley on May, 5 2009. However, the CSC did nothing after the meeting to address the complainant's concerns. In response to the CSC's lack of action, the complainant again wrote to Mr. Head on June 19, 2009, asking him to reconsider her case and to uphold the core values of the CSC.

[7] The complainant argued that she filed a workforce adjustment policy complaint in the 1980s, which she at no time withdrew. In 1989, she suffered a work-related injury, was placed on workers' compensation and subsequently resigned in June 1989. In 2009, the complainant's health improved, and she decided to pursue the matter in an attempt to resolve the outstanding issues.

[8] The complainant submitted documentation showing that her representatives from the Union of Solicitor General Employees (USGE) were no longer supporting her. In response to that lack of action, she filed a complaint with the Board (PSLRB File No. 561-02-403). The complainant argued that, because she was not properly represented, the argument that her complaint is untimely is not applicable. In fact, the complainant was officially advised only on July 13, 2009 that the USGE would not represent her.

Summary of the respondent's submission

[9] The respondent argued that the complaint is untimely. Under subsection 190(2) of the *Act*, a complaint must be filed within 90 days of the alleged violation of the *Act*. The case law has established that that time limit is mandatory. The respondent referred me to *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, and to *Panula v. Canada Revenue Agency and Bannon*, 2008 PSLRB 4.

[10] The respondent argued that the complainant cited numerous incidents that are alleged to have occurred between 1986 and 1989 when she was a CSC employee. The complainant admitted that she resigned, and she ceased to be an employee effective June 24, 1989.

Reasons

[11] In subsection 2(1), the Act defines an employee as a person employed in the public service. The complaint also involves 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.

(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.

...

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

...

(iv) has exercised any right under this Part or Part 2;

...

[12] The complaint relies on incidents that are alleged to have occurred more than 20 years ago. What the respondent did or did not do at that time cannot be used to support a complaint filed in 2009. It is clearly outside the mandatory 90-day period specified in subsection 190(2) of the Act.

[13] In 2009, the complainant decided to make new representations to the CSC about the problems that she experienced between 1986 and 1989. Mr. Head agreed to meet with her, but the result of that meeting was unsatisfactory for the complainant. The complainant pretends that the unsatisfactory results of that meeting constitute discrimination against her resulting from her challenging her performance appraisal in 1986. However, she failed to show any reasonable link to that effect.

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

(The Order appears on the next page)

Order

[15] The complaint is dismissed.

January 28, 2010.

**Renaud Paquet,
Board Member**