

Date: 20100519

File: 166-02-37544

Citation: 2010 PSLRB 66



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MÉLANIE HOULE**

Grievor

and

**TREASURY BOARD  
(Department of Human Resources and Skills Development)**

Employer

Indexed as

*Houle v. Treasury Board (Department of Human Resources and Skills Development)*

In the matter of a grievance referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Roger Beaulieu, adjudicator

***For the Grievor:*** Roma Zamat, Public Service Alliance of Canada

***For the Employer:*** Marie-Josée Bertrand, counsel

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Heard at Montreal, Quebec,  
October 15, 2009, followed by verification by the employer of certain elements of the  
evidence required by the adjudicator and sent to the Board on December 9, 2009.  
(PSLRB Translation)

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**I. Grievance referred to adjudication**

[1] This grievance concerns the interpretation of articles 38 (Maternity Leave without Pay) and 40 (Parental Leave without Pay) of the collective agreement for the Program and Administrative Services group between the Treasury Board and the Public Service Alliance of Canada (“the collective agreement”), which expired June 20, 2003.

[2] The grievance of Mélanie Houle (“the grievor”) against the Department of Human Resources and Skills Development (“the employer”) reads as follows:

[Translation]

*At the time of my maternity leave, I was required to sign an agreement. I agreed to return to work on April 14, 2003, or I would repay my supplemental unemployment benefits. I kept my commitment, but you prevented me from returning to work.*

*Therefore, I request that you rescind your decision to ask me to repay the supplemental unemployment benefits and that you reimburse me what I am owed.*

[3] Articles 38 and 40 of the collective agreement provide for a benefit supplement in certain circumstances. In this case, I will focus specifically on the maternity allowance provided in clause 38.02 since the parties stressed the circumstances of the maternity allowance, although the provisions for maternity allowance are the same as those for parental allowance in clause 40.02.

[4] Clause 38.02 of the collective agreement reads as follows:

**38.02 Maternity Allowance**

*(a) An employee who has been granted maternity leave without pay shall be paid a maternity allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in paragraph (c) to (i), provided that she:*

*(i) has completed six (6) months of continuous employment before the commencement of her maternity leave without pay,*

*(ii) provides the Employer with proof that she has applied for and is in receipt of pregnancy benefits pursuant to Section 22 of the Employment Insurance Act in respect of insurable employment with the Employer,*

and

(iii) has signed an agreement with the Employer stating that:

(A) she will return to work on the expiry date of her maternity leave without pay unless the return to work date is modified by the approval of another form of leave;

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(B) following her return to work, as described in section (A), she will work for a period equal to the period she was in receipt of maternity allowance;

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(C) should she fail to return to work in accordance with section (A), or should she return to work but fail to work for the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the Public Service Superannuation Act, she will be indebted to the Employer for an amount determined as follows:

(allowance received) X (remaining period to be worked following her return to work)

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[total period to be worked as specified in (B)]

however, an employee whose specified period of employment expired and who is rehired by the same department within a period of five (5) days or less is not indebted for the amount if her new period of employment is sufficient to meet the obligations specified in section (B).

...

[5] The answers to the questions raised in this case are found in those provisions.

[6] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35.

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## II. Summary of the evidence

### A. For the grievor

[7] The grievor testified.

[8] The employer did not contest that the grievor met the requirements of clauses 38.02(a)(i) and (ii) of the collective agreement. The grievor was eligible for the allowance that she received. However, she was required to repay it if she did not work for an equivalent period on her return.

[9] The following key details adduced by the parties were not contested. The grievor obtained a contract for a specified period at the CR-05 group and level at the regional call centre for the period from September 26, 2002 to March 26, 2003. The contract was extended from March 27 to April 30, 2003. On April 9, 2003, Michel Lamarche, Director, Quebec call centres, informed the grievor that her contract would expire on April 30, 2003. On May 9, 2003, Mr. Lamarche confirmed a second time to the grievor that the expiry date of her contract was April 30, 2003.

[10] The grievor signed an agreement with the employer that appears as Exhibit S-3 and that reads as follows:

**PROGRAM AND ADMINISTRATIVE SERVICES**  
**PSAC (AS, CM, CR, DA, IS, OE, PM, ST)**

**MATERNITY LEAVE AGREEMENT AND**  
**UNDERTAKING**

1. *This agreement between Mélanie Houle (Employee) and Human Resources Development Canada on behalf of the Employer, the Treasury Board Secretariat, is entered into in accordance with clauses 38.01, and 38.02 of the collective agreement of the Program and Administrative Services group, ratified by the Treasury Board Secretariat and the Public Service Alliance of Canada.*
2. *In conformity to clause 38.02(a)(iii)(A) and (B), I undertake to return to work for the Employer on April 22, 2003 unless this date is modified with the Employer's consent. Following my return from maternity leave without pay, I will work for a period equal to the period during which I will have been in receipt of the maternity allowance.*

3. *Notwithstanding the preceding, and in conformity to clause 38.02(a)(iii)(A), I undertake to return to work on the expiry date of the leave granted to me under clause 40.01 (parental) and/or 41.02 (care and education of preschool-aged child) and to work for the employer in accordance with Article 2 of this agreement and undertaking.*
4. *I recognize the implications of clause 38.02(a)(iii)(C) of the collective agreement if I were not to return to work as stipulated above.*

[11] I will now examine whether the grievor met the requirements set out in Exhibit S-3. The grievor claimed during her testimony that she never received a letter, dated May 21, 2002 (Exhibit S-7), from which I cite the following relevant extracts:

[Translation]

...

May 21, 2002

Ms. Mélanie Houle  
CAR-2829

...

Maternity and parental allowance

*As provided in the collective agreement, and if you provide us with proof that you are receiving benefits under the Employment Insurance plan, you will receive a maternity and parental allowance. However, since the length of your offer of employment does not cover the period of your leave without pay, plus the period that you must complete after your return to work (as indicated in the attached agreement), we recommend that you wait until your contract has been extended in order to comply with the return-to-work clause before asking for the allowance.*

*In addition, you must sign the attached agreement in which you commit to return to work and to remain at work as described in the agreement, otherwise you will be required to repay the employer all or part of the allowances received for your leave, unless you are laid off or in the event of your death.*

*You will receive the following allowances:*

- *for the first two (2) weeks, an allowance equal to 93% of your gross weekly pay;*

- *for an additional period to the end of the period of employment (maximum 15 weeks), an allowance equal to the difference between the unemployment insurance benefits received and 93% of your gross weekly pay;*
- *for an additional period to the end of the period of employment (maximum 35 weeks), an allowance equal to the difference between the unemployment insurance benefits received and 93% of your gross weekly pay.*

*Given that the amount of the allowance payable for the additional periods of 15 and 35 weeks is calculated based on the benefits received under the Employment Insurance Act, you must have the attached form completed by an employment insurance officer and returned to us. Once you have received your final benefits cheque, you must send us a copy of your "Statement of Employment Insurance Benefits" stubs or a copy of screen EN19, which you can obtain from your employment insurance officer for verification purposes.*

...

*Please inform us of the actual date of birth of your child and send us a copy of the birth certificate and the legal adoption document, if applicable.*

*As soon as you know the actual date of your return to work, you must inform your centre's personnel clerk so that we can take the pay action required to put you back on the payroll.*

*If you require further information, do not hesitate to contact your centre's personnel clerk.*

*Mélanie Léger  
Compensation Consultant*

[Emphasis in the original]

[12] The grievor testified that she never received the letter and that, had she received and read it, she would never have asked for the maternity supplement, which she is now required to repay.

### **B. For the employer**

[13] The employer called the following two individuals to testify: Mr. Lamarche and Mélanie Léger, a compensation consultant.

[14] Mr. Lamarche testified first. He is the director of the Quebec call centres, which employ about 125 people on a term basis, including the grievor.

[15] He stated that, after two years of cumulative service, an employee appointed for a specified period may be placed on an eligibility list for an opportunity to become an indeterminate employee.

[16] Mr. Lamarche is the manager who replied to the grievor's grievance at the first level of the grievance process.

[17] Ms. Léger, the second witness, wrote the May 21, 2002 letter addressed to the grievor. She is certain that she sent it to the grievor.

### **III. Summary of the arguments**

#### **A. For the grievor**

[18] At the beginning of the arguments, the grievor's representative referred me to an independent study by the Public Service Commission of Canada that indicates that the federal public service is overly reliant on temporary labour to meet its ongoing needs.

[19] The grievor's representative raised her concern about the uncertainty surrounding the May 21, 2002 letter.

[20] Finally, the grievor's representative asked me, in the event that I dismissed the grievance, to stipulate in my decision a monthly repayment amount not exceeding \$60.

#### **B. For the employer**

[21] Counsel for the employer pointed out that the wording of clause 38.02 of the collective agreement is clear. The term contract was not renewed, for valid reasons, and unfortunately for the grievor, the contract expired as stipulated when the grievor was appointed for a specified period, and she was not discriminated against.

[22] Counsel for the employer provided me with the following relevant case law: *Dionne v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File Nos. 166-02-24975 and 24976 (19950228); and *Guertin v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-18256 (19890710). In those two decisions, the provisions of the collective agreements were similar to those in this case. The grievors were required to repay the allowances that they were paid during their maternity leave. In *Dionne*, the case involved a contract not being renewed. In *Guertin*, the employer

forgot to have the agreement signed. However, the grievor was still required to repay the allowance, in accordance with the provisions of the collective agreement.

[23] Counsel for the employer asked me to dismiss the grievance.

#### **IV. Reasons**

[24] I cannot allow the grievance for the following reasons.

[25] The grievor signed a valid agreement (Exhibit S-3), in conformity with the provisions of clauses 38.02(a)(iii)(A), (B) and (C) of the collective agreement. The wording of those provisions is clear and allows no room for interpretation.

[26] The evidence revealed that the grievor's contract was not renewed.

[27] The employer acted lawfully in not renewing the grievor's contract. There is no evidence of discrimination against the grievor.

[28] During her testimony, the grievor stated that she never received the letter dated May 21, 2002. She added that, had she received it, she would never have asked for the supplementary allowance provided in clause 38.02 of the collective agreement.

[29] Ms. Léger testified that she was certain that she sent the May 21, 2002 letter to the grievor.

[30] Of those contradictory testimonies, I retain that of Ms. Léger. First, the May 21, 2002 letter included the employment record required to apply for employment insurance benefits and a form for the supplemental allowance. Ms. Houle returned that form on May 24, 2002, and she received all the due allowances. Therefore, it must be assumed that she received the letter.

[31] Second, it was Ms. Houle's second maternity leave. In April 2001, she received an identical letter with the same warning in the event that her employment contract was not extended. Finally, Ms. Houle signed an agreement clearly providing for repayment under clause 38.02(a)(iii)(C) of the collective agreement. It was her responsibility to understand what she was committing to by signing the agreement.

[32] The evidence shows that the employer exercised its management right when it did not renew the grievor's contract. The grievor, by losing her employment in the



public service, suffered serious financial prejudice. She had three minor children at home, including a child with special needs.

[33] For some time, the grievor has been repaying the employer \$60 per month to address her maternity supplement debt.

[34] The grievor was unable to fulfill her work obligation because her contract was not renewed. It is my finding that she was duly advised.

[35] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**V. Order**

[36] The grievance is dismissed.

[37] The repayment amount is to remain at \$60 per month.

May 19, 2010.

PSLRB Translation

**Roger Beaulieu,  
adjudicator**