

Date: 20110902

File: 561-02-521

Citation: 2011 PSLRB 109



*Public Service
Labour Relations Act*

Before the Public Service
Labour Relations Board

BETWEEN

STÉPHANE KÉROUACK

Complainant

and

SYLVIE GRAVEL

Respondent

Indexed as
Kérouack v. Gravel

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

REASONS FOR DECISION

Before: [Renaud Paquet, Vice-Chairperson](#)

For the Complainant: [Himself](#)

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

Decided on the basis of written submissions
filed July 11 and August 2 and 17, 2011.
(PSLRB Translation)

Complaint before the Board

[1] Stéphane Kérouack (“the complainant”) works as a maintenance mechanic for the Correctional Service of Canada (CSC) at the Ste-Anne-des-Plaines Institution. On June 2, 2011, he filed a complaint with the Public Service Labour Relations Board (“the Board”) against Sylvie Gravel, Assistant Director, Ste-Anne-des-Plaines Institution (“the respondent”). The complainant based his complaint on paragraphs 190(1)(b), (d) and (g) of the *Public Service Labour Relations Act* (“the Act”).

[2] The complainant claims that the respondent investigated him illegally and in bad faith. He alleges that, among other things, the respondent did not follow the investigation procedures in effect, did not consider his version of the facts, solicited a false testimony and harassed him. The complainant asks that those practices be investigated, that he be paid monetary damages and that he no longer be in direct or indirect contact with the respondent.

[3] Section 190 of the *Act*, on which the complaint is based, reads as follows:

190. (1) The Board must examine and inquire into any complaint made to it that

(a) the employer has failed to comply with section 56 (duty to observe terms and conditions);

(b) the employer or a bargaining agent has failed to comply with section 106 (duty to bargain in good faith);

(c) the employer, a bargaining agent or an employee has failed to comply with section 107 (duty to observe terms and conditions);

(d) the employer, a bargaining agent or a deputy head has failed to comply with subsection 110(3) (duty to bargain in good faith);

(e) the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);

(f) the employer, a bargaining agent or an employee has failed to comply with section 132 (duty to observe terms and conditions); or

(g) the employer, an employee organization or any person has committed an unfair labour practice within

the meaning of section 185.

...

[4] Shortly after receiving the complaint, I asked the Board's registry to notify the complainant that his complaint could not have been founded on paragraphs 190(1)(b) and (d) of the *Act*. Those paragraphs refer to the mutual duties of good faith on parties involved in negotiating a collective agreement or in two-tier collective bargaining, as set out in sections 106 and 110. Only those parties can file complaints against each other alleging breaches of those provisions.

[5] It remains to be determined, based on the complainant's submissions, whether his complaint could have been founded on paragraph 190(1)(g) of the *Act*, which refers to section 185. I wrote the following at paragraph 10 of *Paradis v. Fraser and Treasury Board*, 2009 PSLRB 130:

[10] The unfair practices referred to in section 185 of the Act involve employer interference in the business of an employee organization (paragraph 186(1)(a)) and employer discrimination against an employee organization (paragraph 186(1)(b)) or a person who is a member of or who participates in an employee organization or who exercises any right under the Act (subsection 186(2)). Sections 187 and 188 impose restrictions on employee organizations. Subsection 189(1) states that no person shall intimidate or coerce an employee to become or to refrain from becoming a member of an employee organization or to refrain from exercising any other right under Part 2 of the Act. . . .

[6] Since the complaint is against Ms. Gravel, one of the employer's representatives, it could have been founded only on the provisions of section 186 or 189 of the *Act*. On that subject, and at my request, the Board's registry wrote to the complainant on June 24, 2011, asking him for a detailed submission explaining how the respondent's acts, actions or decisions constituted breaches of paragraph 190(1)(g). As specified in the *Public Service Labour Relations Board Regulations*, the Board's registry forwarded the complaint to the respondent and asked her to respond. I did not consider that response when I prepared my decision, except for the comment at paragraph 10 of this decision.

Summary of the evidence submitted to support the complaint

[7] I thoroughly reviewed the documents that the complainant submitted in reply to my request of June 24, 2011. Those documents are the following: an undated note that refers to an investigation report and to criticisms of the respondent, an investigation report dated October 15, 2009, a disciplinary action report dated August 5, 2010, a grievance dated August 9, 2010, an undated document about a harassment complaint against the respondent, an email dated September 3, 2009, an email dated November 3, 2010, excerpts from the complainant's "Facebook" page, an email dated September 23, 2009, and a letter from the complainant dated March 28, 2011. Although those documents also refer to other matters, they mostly concern an investigation that the respondent led for the CSC into the complainant's alleged acts, actions and behaviours. The complainant contends that the investigation was mishandled and that it was illegal. In addition, the investigation allegedly had devastating consequences on his personal life and health. The complainant also accuses the respondent of intimidating and harassing him and of behaving unacceptably toward him.

[8] The complainant filed a harassment complaint against the respondent. Since he was unsuccessful, he decided to file this complaint with the Board. The complainant also filed a grievance against the disciplinary action that the CSC imposed on him because of the respondent's investigation.

[9] The respondent alleges that she did not violate the *Act*. It is not of use to reproduce her submissions to me in this decision.

Reasons

[10] As noted earlier, I thoroughly reviewed the complainant's submitted documents. Nothing in them leads me to conclude that the respondent contravened the provisions of the *Act* on which the complaint is based. Additionally, the complainant did not demonstrate to me that the respondent contravened any other provisions of the *Act*.

[11] The complainant demonstrated that he was, in his opinion, the victim of treatment that he considered extremely unfair and that allegedly affected him detrimentally. Even were he correct, it would not warrant concluding that the *Act* was violated.

[12] The issues for which an employee can file a complaint against a representative

of his or her employer under the *Act* are relatively limited. An employee wishing to contest the acts, actions or behaviours of the employer or of one of its representatives toward him or her usually must file a grievance. As I stated earlier, the unfair practices referred to in section 185 of the *Act* involve employer interference in the administration of an employee organization and employer discrimination against an employee organization or a person who is a member of or who participates in an employee organization or who exercises any right under the *Act*. Nothing in this case suggests that the respondent committed any such practices or any acts prohibited by section 189, that is, intimidation against joining or refraining from joining an employee organization or against exercising a right conferred under Part 2 of the *Act*.

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

(The Order appears on the next page)

Order

[14] The complaint is dismissed.

September 2, 2011.

PSLRB Translation

**Renaud Paquet,
Vice-Chairperson**