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File: 561-02-510

Citation: 2011 PSLRB 142

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

ANGÈLE ROY

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

Indexed as
Roy v. Professional Institute of the Public Service of Canada

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

REASONS FOR DECISION

Before: Stephan J. Bertrand, Board Member

For the Complainant: Eric Marquette, counsel

For the Respondent: Martin Ranger, legal advisor

Heard at Montreal, Quebec,
August 10, 2011.
(PSLRB Translation)

I. Complaint before the Board

[1] This decision deals exclusively with the timeliness of a complaint made by Angèle Roy ("the complainant"), on April 7, 2011, in which she alleged that her bargaining agent, the Professional Institute of the Public Service of Canada ("the Institute" or "the respondent"), committed an unfair labour practice.

[2] The complainant based her complaint on paragraph 190(1)(*g*) of the *Public Service Labour Relations Act* (*PSLRA*), which reads as follows:

> ***190.*** *(1) The Board must examine and inquire into any complaint made to it that*
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> . . .
>
> *(*g*) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*

[3] In Box 9 of her complaint form, the complainant stated that the respondent failed to comply with paragraphs 188(*c*), (*d*) and (*e*) of the *PSLRA,* which read as follows:

> ***188.*** *No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*
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> . . .
>
> *(*c*) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization's standards of discipline to that employee in a discriminatory manner;*
>
> *(*d*) expel or suspend an employee from membership in the employee organization, or take disciplinary action against, or impose any form of penalty on, an employee by reason of that employee having exercised any right under this Part or Part 2 or having refused to perform an act that is contrary to this Part; or*
>
> *(*e*) discriminate against a person with respect to membership in an employee organization, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person has*
>
> *(i) testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part or Part 2,*

> *(ii) made an application or filed a complaint under this Part or presented a grievance under Part 2, or*
>
> *(iii) exercised any right under this Part or Part 2.*
>
> . . .

[4] In its written reply, and at the hearing, the Institute raised a preliminary objection, stating that the complaint was inadmissible and that it should be summarily dismissed because it was not filed within the time limit set out in subsection 190(2) of the *PSLRA*, which reads as follows:

> ***190.*** *(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.*

[5] The purpose of the hearing was to determine whether the complaint was filed within 90 days of the date on which the complainant knew or ought to have known of the circumstances giving rise to the complaint.

II. Summary of the evidence

A. For the respondent

[6] Edward Gillis has been the Institute's chief operating officer and executive secretary since May 2010. Before that, and at the time of the incidents in question, he was its executive secretary. He was spokesperson for the Board of Directors.

[7] Mr. Gillis was familiar with the facts and events of the complainant's complaint. He said that the circumstances giving rise to the complaint dated to October 20, 2005. On that date, the complainant was notified via three letters from the Institute's president that its Executive Committee was imposing non-disciplinary corrective measures against her following an investigation into allegations of harassment, the results of which confirmed that the allegations were grounded.

[8] Pierre Labelle prepared the investigation report, dated September 12, 2005. The Executive Committee reviewed it at a meeting on October 4, 2005. Mr. Labelle was instructed to investigate harassment complaints against the complainant that had been filed by three of the Institute's stewards. Although Mr. Gillis provided advice to the Institute's Executive Committee, the Committee made the decision about the

complainant, not him.

[9] Mr. Gillis also indicated that, although the complainant asked for a copy of Mr. Labelle's report shortly after receiving the letters of October 20, 2005, the Institute denied her request and maintained its position until November 2009. In his opinion, after being pressured by the Quebec Regional Executive, the Institute changed its mind and sent a copy of Mr. Labelle's report to the complainant on November 10, 2009.

[10] After receiving Mr. Labelle's report, the complainant sent a letter to the Institute, claiming $15 000 in damages and demanding a formal apology from the Institute, or $25 000 in damages if it failed to offer an apology. Mr. Gillis said that the Institute simply ignored the complainant's demands.

[11] On June 29, 2010, the complainant wrote to the new Institute president, John Corbett, stating that she would like to meet with him to discuss the prejudices that she allegedly suffered as a result of the harassment complaints by the three stewards in 2005. According to Mr. Gillis, after attempting to determine the participants and the purpose of the meeting, the Institute declined the complainant's invitation and repeated that the case was considered closed. Mr. Gillis added that the same message had been communicated by the former president in a letter addressed to the complainant on February 6, 2006.

[12] On October 26, 2010, the Institute received a formal demand from the complainant's counsel, in which she claimed $250 000 for unspecified prejudices, to be paid by a deadline, otherwise a lawsuit would be filed against the Institute in the Superior Court of Quebec. Two other letters followed the letter of October 26, 2010; one was dated January 10, 2011, and the other was dated January 13, 2011. The Institute then instructed its counsel to provide a formal response to the complainant's demands, which was done on January 17, 2011.

[13] The complainant then filed her complaint on April 7, 2011. According to Mr. Gillis, her complaint dealt entirely with the events of 2005 and the corrective action that the Institute had taken against her. He said that she never used the internal appeal process to contest the Institute's decision of October 20, 2005, although she could have exercised that right.

B. For the complainant

[14] The complainant is a regional nurse. The Correctional Service of Canada's Community Health Services has been her employer for 23 years. She became a steward in 2000, then a regional representative for the Institute in 2003, until she stepped down on September 11, 2007.

[15] In 2004, three Institute stewards filed harassment complaints against the complainant. According to her, the Institute backed the complaints and the conclusions in Mr. Labelle's report. She deplored the fact that she did not receive a copy of the report until November 10, 2009 and that the Institute ignored her request to investigate the three stewards who complained about her.

[16] According to the complainant, she could not contest the Institute's corrective measures made in October 2005, since the grounds for its actions were not revealed until November 10, 2009, after she had taken several steps.

[17] The complainant indicated that, after reading Mr. Labelle's report, she emailed Mr. Corbett on November 10, 2009, to try to convince him to meet with her so that she could explain herself and be reassured that such an incident would not happen again. However, I found that the email did not mention a possible meeting and that it appeared to be more about obtaining financial damages from the Institute. The request for a meeting was not made until June 29, 2010, following a letter from the complainant.

[18] The complainant stated that she was disappointed by the Institute's refusal to meet with her. She instructed her counsel to issue a demand to the Institute in which she claimed the amount of $250 000. The Institute received the demand on October 26, 2010. The complainant confirmed that the demand was not submitted to punish the Institute for refusing to meet with her but instead to obtain moral damages based on the events of 2005.

[19] The complainant stated that the response of the Institute's counsel mentioned the possibility of a meeting to discuss the demand, to which the complainant's counsel provided a reply. However, that possibility faded quickly when the complainant received a letter from the Institute's counsel dated January 17, 2011. According to the complainant, the letter not only confirmed that a meeting would not take place; it was

also a trigger for her complaint. Its contents left her feeling thoroughly shocked and overwhelmed. Among other things, she stated that she was insulted by the Institute's threat of the possibility of bad press against her should she file a lawsuit.

[20] On April 7, 2011, the complainant filed her complaint. She admitted that she took no earlier steps, other than making financial demands, to contest the Institute's corrective measures imposed in October 2005, despite the fact that she received Mr. Labelle's report in November 2009.

[21] According to the complainant, the Institute's corrective measures imposed in October 2005 were abusive, ungrounded and discriminatory. She added that Mr. Labelle's report was completely botched.

[22] The complainant's counsel called Yvon Brodeur as a witness. Mr. Brodeur is a senior contracting officer with Fisheries and Oceans Canada, Contract Services. He is also a member of the Institute's Board of Directors. His testimony focused primarily on the complainant's efforts to obtain a copy of Mr. Labelle's report. However, I did not find anything in his testimony to assist me in making my decision. Therefore, I see no need to reproduce his testimony in full.

III. Summary of arguments

A. For the respondent

[23] According to the Institute, if the complainant considered the corrective measures imposed in its letters of October 20, 2005 abusive, discriminatory and ungrounded, then she should have taken the appropriate steps to contest it at that time, not six years later.

[24] The Institute submitted that subsection 190(2) of the *PSLRA* clearly states that the complaint should have been made no later than 90 days after the date on which the complainant knew, or ought to have known, of the circumstances giving rise to the complaint. According to the Institute, that time limit must be respected and cannot be extended, even if the complainant was unaware of her rights. The Institute referred me to the following related cases: *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, at para 55, *Hérold v. Public Service Alliance of Canada and Gritti*, 2009 PSLRB 132, at para 13, *Éthier v. Correctional Service of Canada and Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN*, 2010 PSLRB

7, at para 18, and *Lampron v. Professional Institute of the Public Service of Canada*, 2011 PSLRB 29, at para 41.

[25] According to the Institute, the circumstances giving rise to the complaint, which the complainant knew about, dated to October 20, 2005, meaning that the complaint was filed well outside the 90-day period.

[26] The Institute pointed out that, although Mr. Labelle's report was not forwarded to the complainant until November 2009, it did not change the fact that she was aware of the report's consequences in October 2005. Action was not taken by means of Mr. Labelle's report but instead by the letters dated October 20, 2005.

[27] According to the Institute, the complainant was notified on February 6, 2006 — a few days after the 90-day time limit expired — that the Institute considered the case closed.

[28] The letter dated January 17, 2011 did not add anything new and served only to reiterate the main points of Mr. Labelle's report and to respond to the complainant's unjustified demands. Therefore, the letter cannot be considered the trigger that gave rise to the complaint.

[29] The Institute also pointed out that, even were I to accept that the complainant was unable to contest the corrective measures of October 2005 before November 10, 2009, when she received a copy of Mr. Labelle's report, the fact remains that she did not take any action before April 7, 2011, which was nearly 17 months after she received the report. The Institute therefore claimed that the complaint was made past the prescribed time limit were Mr. Labelle's report considered the trigger.

[30] The fact that the complainant demanded a meeting with the Institute specifically following her demands for monetary damages in November 2009 and October 2010 did not extend the applicable time limit prescribed in subsection 190(2) of the *PSLRA*. The Institute referred to paragraphs 13 and 14 of *Shutiak v. Public Service Alliance of Canada*, 2009 PSLRB 29.

[31] Finally, in response to the complainant's allegations that abusive disciplinary measures were imposed on her, the Institute pointed out that a complaint made under paragraph 188(*c*) of the *PSLRA* is inadmissible if the conditions stipulated in subsection 190(3) are not met. Therefore, the Board does not have jurisdiction to hear

the complaint because the complainant never took advantage of the Institute's internal appeal process to contest the alleged disciplinary measures imposed on her. The Institute referred me to *Daykin v. Union of Taxation Employees et al.*, 2010 PSLRB 61, and *Renaud v. Canadian Association of Professional Employees*, 2009 PSLRB 177.

B. For the complainant

[32] The complainant pointed out that, although the Institute mentioned more than once that the case was closed, she never considered it closed before January 17, 2011.

[33] In the complainant's view, the letter of January 17, 2011 was the trigger for her complaint since it definitively confirmed to her that the Institute was refusing to meet with her to settle their dispute. In her opinion, the refusal contravened the duty of fair representation provided under section 187 of the *PSLRA*.

[34] The complainant argued that she was unable to contest the corrective measures of October 2005 because, at that time, she was still unaware of the contents of Mr. Labelle's report, on which the Institute had based its decision. Once she read the report, she demanded a meeting with the Institute. Its refusal was not communicated until January 17, 2011. Consequently, the complainant argued that her complaint was not out of time.

[35] According to the complainant, the January 17, 2011 letter confirmed that the Institute was acting cavalierly and in bad faith, which constituted an unfair labour practice. She argued that she was offended by the threat in the Institute's letter that there might be bad press against her should she choose to file a lawsuit.

IV. Reasons

[36] This decision deals exclusively with the respondent's objection that the complaint is out of time. Timeliness is a fundamental factor, and the key element of timeliness is prescribed in subsection 190(2) of the *PSLRA* as follows:

> ***190.*** *(2) . . . 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.*

[37] The Board has repeatedly affirmed the mandatory nature of subsection 190(2)

of the *PSLRA*. The time limit prescribed for filing a complaint must always be respected, as stated in *Castonguay, Hérold, Éthier* and *Lampron*, to which the Institute referred. As for interpreting subsection 190(2), the Board wrote the following at paragraph 55 of *Castonguay*:

> *[55] That wording is clearly mandatory by its use of the words "must be made no later than 90 days after the events in issue". No other provision of the* PSLRA *gives jurisdiction to the Board to extend the time limit prescribed in subsection 190(2). Consequently, subsection 190(2) of the* PSLRA *sets a boundary, limiting the Board's power to examine and inquire into any complaint that an employee organization has committed an unfair labour practice within the meaning of section 185 (under paragraph 190(1)(*g*)) of the* PSLRA*) and that is related to actions or circumstances that the complainant knew, or in the Board's opinion ought to have known, in the 90 days previous to the date of the complaint.*

[38] The extent of my jurisdiction is to determine, based on the evidence before me, the date on which the 90-day period started, or in other words, the date on which the complainant knew, or ought to have known, of the action or circumstances giving rise to her complaint, which is purely a question of fact.

[39] The complainant filed her complaint on April 7, 2011, which means that it must have been based on actions or circumstances that she knew of, or ought to have known of, by January 7, 2011 at the latest. Any actions or circumstances attributable to the respondent that occurred before that date and of which the complainant knew could not have given rise to this complaint. since they would definitely be outside the 90-day period.

[40] Based on my review of the testimonial and documentary evidence submitted by the parties, I am satisfied that the complainant knew or ought to have known of the actions or circumstances giving rise to her complaint on October 20, 2005, when she was advised of the corrective measures, or on November 10, 2009 at the latest, when she received a copy of Mr. Labelle's report. Regardless of which date is used, the complaint was filed well outside the 90-day period.

[41] I agree with the Institute's argument that, although Mr. Labelle's report was not forwarded to the complainant before November 2009, it did not change the fact that she knew of the consequences of the report in October 2005. Mr. Labelle's report was not the source of the contested corrective measures; instead, it was the respondent's

letters dated October 20, 2005. Nothing stopped her from taking the appropriate steps within the time limit and asking the Board or the Internal Appeal Committee to have a copy of the report sent to her before the hearing.

[42] However, I cannot agree with the complainant's argument that the letter of January 17, 2011, which presumably definitively confirmed that the Institute refused to meet with her to settle their dispute, was the trigger for her complaint.

[43] The letter of January 17, 2011 refers to the facts and events stated in the respondent's letters of October 20, 2005 and in Mr. Labelle's report. The complainant did not learn anything new from the letter as she had already known the facts since October 2005 or since November 10, 2009 at the latest.

[44] Nothing in the letter of January 17, 2011 could be considered a trigger that gave rise to a complaint of this type. And nothing could misconstrue the context under which the letter in question was sent. It was a response to a formal demand, written by the respondent's counsel and addressed to the complainant's counsel. Contrary to the complainant's argument, I find that the trigger existed long before and was well known to her, to the point where she demanded $25 000 in damages in November 2009, after reading Mr. Labelle's report, and instructed her counsel to issue a demand for a payment of $250 000 in October 2010. Evidence showed that the demand was not issued to compensate the complainant for the Institute's refusal to meet with her but instead for moral damages presumably from the events of 2005.

[45] Although the complainant claimed to be offended by the Institute's threat of possible bad press against her if she filed a lawsuit, I found that her letter of June 29, 2010, contained the same type of threat against the Institute.

[46] On reading the complaint, it is clear that the actions and circumstances giving rise to this complaint were those of October 2005 and that they were made clear in November 2009 on receipt of Mr. Labelle's report. The testimonies of Mr. Gillis and the complainant confirmed that fact.

[47] The complainant tried to convince me that her attempts to meet with the respondent to try to get it to change its decision or to agree on damages of some sort resulted in delaying the date on which she became aware of the circumstances giving rise to her complaint. The Board commented on this matter in *Éthier*, at paragraph 21,

which reads as follows:

. . .

> *[21] . . .The period for filing a complaint cannot be extended by a complainant's attempts to convince a union to change its decision. To the extent that there is a violation of the* PSLRA*, there is no minimum or maximum standard for the degree of knowledge that a complainant must have before filing his or her complaint.*

. . .

[48] In *Lampron*, I wrote the following:

. . .

> *[46] . . . even were I to accept that the complainant had discussions with representatives of the Institute to reverse its decision to expel him, as he testified, or that he tried during the meeting on September 5, 2009 to persuade the respondent to revisit its decision, which was not established by the evidence, it would not change the date on which he knew or ought to have known of the circumstances giving rise to his complaint. Despite the complainant's efforts to resolve the conflict, the* PSLRA *requires that the complaint be filed within the prescribed time limit (see* Boshra*, at paragraph 47). Had the September 5, 2009 meeting been successful, the complainant could simply have withdrawn his complaint.*

. . .

[49] Therefore, I conclude that the circumstances in this matter were not extended by the complainant's persistent demands to meet with the respondent.

[50] The complainant also attempted to convince me that the respondent's refusal to meet with her, as confirmed in its letter of January 17, 2011, constituted an unfair labour practice, and specifically, the action giving rise to her complaint. As the respondent suggested, that argument has no basis. Such a refusal simply cannot be the reason for a complaint under paragraphs 188(*c*), (*d*) and (*e*) of the *PSLRA*.

[51] In this matter, the complainant's knowledge on October 20, 2005 of the respondent's decision to impose corrective measures on her was the trigger for the violation that she alleged and the start of the 90-day period. Therefore, I am satisfied that she did not file her complaint within the time limit prescribed in subsection

190(2) of the *PSLRA*.

[52] For those reasons, I agree with the respondent's objection that the complaint is inadmissible because it is out of time.

[53] As I have already found that the complaint is inadmissible because it was not filed within the prescribed time limit, I need not deal with the respondent's second argument, which was about the complaint's inadmissibility under paragraph 188(*c*) of the *PSLRA*.

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

(The Order appears on the next page)

V. Order

[55] The complaint is dismissed.

December 9, 2011.

PSLRB Translation

Stephan J. Bertrand,
Board Member