

Date: 20110216

File: 568-34-200

Citation: 2011 PSLRB 21



*Public Service  
Labour Relations Act*

Before the Chairperson

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BETWEEN

**DIANE MÉTAYER**

Applicant

and

**CANADA REVENUE AGENCY**

Respondent

Indexed as

*Métayer v. Canada Revenue Agency*

In the matter of an application for an extension of time referred to in paragraph 61(b) of the *Public Service Labour Relations Board Regulations*

**REASONS FOR DECISION**

***Before:*** Michele A. Pineau, Vice-Chairperson

***For the Complainant:*** Herself

***For the Employer:*** Anne-Marie Duquette, counsel

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Heard at Ottawa, Ontario,  
February 3, 2011.  
(PSLRB Translation)

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**Application before the Chairperson**

[1] The complainant, Diane Métayer, was an employee of the Canada Revenue Agency (“the employer”). On November 16, 2009, she filed an application for an extension of time to file a grievance with the Public Service Labour Relations Board (“the Board”) that reads as follows:

[Translation]

*By this, I wish to request an extension of time.*

*My former employer: Canada Revenue Agency*

*Problems related to the year 2000*

- garnishment of wages*
- taxes*
- pay equity*
- PSHCP*

[2] On December 3, 2009, the employer provided a preliminary response, pointing out that the application was not clear, that the complainant had left its employ 10 years previously and that, consequently, it had destroyed the records in 2005. The relevant excerpt follows:

[Translation]

...

*The employer is unable for the moment to identify the matter to which the complainant refers. The only information that the employer has on the complainant is that she was in its employ for a period of approximately 10 years and that she retired in February 2000. In addition, in keeping with its usual practice, the employer destroyed all records about the complainant in 2005, five years after the end of her period of employment. The employer was unable to identify any grievance file related to the complainant. In addition, in her letter of November 16, 2009, the complainant failed to provide any information that would have enabled the employer to identify the matter for which she requests an extension of time.*

...

[3] The employer asked the Board to communicate with the complainant to obtain more information.

[4] On December 21, 2009, the complainant responded to the employer's request as follows:

[Translation]

...

*For over **two years**, I had discussions with Ms. Diane Beaudoin, Ms. Lynne Riley and Ms. Martine Poudrier, by telephone and email.*

**NOTHING WAS CORRECTED**

*I submitted the mistakes to the Jonquière tax centre, and following their conversation with Ms. Martine Poudrier, the tax centre suggested that I file a complaint against my employer;*

**I COMPLAINED TWICE: NOTHING HAPPENED**

*I filed a complaint with the National Intake Centre (service-related complaints)*

**I WAS SENT BACK TO MY EMPLOYER**

*I complained to the Taxpayers' Ombudsman*

**THE OFFICE OF MINISTER BLACKBURN ASKED THEM TO WITHDRAW FROM MY CASE**

*I complained to Minister Blackburn*

**RESPONSE: NO MISTAKE**

*I asked for help from the Union of Taxation Employees*

**MY EMPLOYER INTERFERED**

*I complained to Ms. Maura Butko (with whom I worked), Director, Professional Practice and Corporate Services, Internal Audit/Corporate Audit and Evaluation Branch*

**NO RESPONSE**

*I again submitted my complaint to the Taxpayers' Ombudsman*

**Response: SOLVE MY PROBLEMS WITH MY EMPLOYER**

*I sent 3 questions to Ms. Lucie Labelle, Assistant Director, Compensation Policy and Program Delivery - Workplace Relations and Compensation Directorate - Canada Revenue Agency*

**NO RESPONSE**

*I complained to the Office of the Superintendent of Bankruptcy Canada + the bankruptcy union, Jean Fortin et Associés contacted my employer*

**NO RESPONSE AND NO CORRECTION**

*Therefore, do not tell me that, sir, my employer is unable for the moment to identify the matter referred to by the complainant.*

*In addition, if my employer is allowed to destroy records, it is not my problem. Ask Ms. Martine Poudrier; she is aware of everything.*

...

[Emphasis in the original]

[5] On January 8, 2010, the employer responded to the complaint as follows:

[Translation]

...

*First, the employer wishes to indicate that it has been able to identify the information that the complainant mentioned in her correspondence of December 21, 2009. The employer had mentioned in its correspondence of December 3, 2009 that it did not have any information about the complainant, thinking that the latter was referring to grievance files. The employer apologizes for that misunderstanding and indicates that it possesses records about the complainant's compensation.*

*The additional information provided in the complainant's December 21 correspondence does not enable the employer to determine with certainty the subject of a possible grievance for which she requested an extension of time. However, the employer's information about her compensation file enables it to conclude that the circumstances that might have given rise to a grievance occurred at a time that greatly exceeds the time limit set out in the collective agreement for filing a grievance. Clause 18.11 of the collective agreement between the Canada Revenue Agency and the Public Service Alliance of Canada stipulates that:*

**18.11** An employee may present a grievance to the First Level of the procedure in the manner prescribed in clause 18.06 not later than the twenty-fifth (25th) day after the date on which he or she is notified orally or in writing, or on

which he or she first becomes aware of the action or circumstances giving rise to the grievance.

*Consequently, under paragraph 95(1)(a) of the Public Service Labour Relations Board Regulations, the employer objects to the application for an extension of time filed by the complainant in her correspondence of November 23, 2009 on the grounds that the time limit specified in the applicable collective agreement has been greatly exceeded.*

*Subsection 95(1) states that:*

95.(1) A party may, no later than 30 days after being provided with a copy of the notice of the reference to adjudication,

(a) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the presentation of a grievance at a level of the grievance process has not been met;

*Additionally, assuming that the grievance is about compensation, the employer objects to the complainant's application for an extension of time given that there is no indication that the complainant is represented by her bargaining agent. Subsection 208(4) of the Public Service Labour Relations Act states that the complainant must obtain the approval of her bargaining agent to file a compensation-related grievance:*

208(4) An employee may not present an individual grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.

*To conclude, for the above reasons, the employer objects to the extension of time requested by the complainant.*

...

[6] On January 19, 2010, the complainant replied as follows:

[Translation]

...

*This is further to Mr. Cousineau's letter of January 8, 2010.*

*I completely agree with Mr. Cousineau that the grievance should not be dealt with through mediation.*

*My employer has always refused to correct its mistakes and to give me what I was entitled to. My 2000 tax return **still does not balance.***

*When I was absent in 1996 due to illness, my employer “forgot me” and never sent me the documentation addressed “to employees.” Thus, I lost considerable sums, and I had to declare personal bankruptcy. Here are a few extracts from statutes to show that I too have “rights.”*

...

[Emphasis in the original]

[7] The complainant cites the following provisions, which are not reproduced in this decision: the *Public Service Labour Relations Act* (sections 185, 186 and 208); the *Employment Equity Act* (section 7); the *Canadian Human Rights Act* (sections 1 and 7); the *Canada Labour Code* (sections 147, 188, 238, 239.1 and 254); and the *Income Tax Act* (section 2), the Mandate of the Taxpayers’ Ombudsman and the Taxpayer Bill of Rights (sections 1 to 15).

[8] On January 20, 2010, the complainant emailed the following correction to the Board:

[Translation]

...

*I would simply like to correct what I said to you in my letter:*

*“My 2000 tax return still does not balance **by the following statements:***

*My federal tax returns for 1996 to 2009 “still do not balance,”*

*my provincial returns (Ontario) from 1996 to 1999 “still do not balance” and*

*my provincial returns (Quebec) from 2000 to 2009 “still do not balance” because*

*my employer and the union both refused to help me.*

...

[Emphasis in the original]

[9] On August 18, 2010, the Board wrote to the parties to determine their

availability in order to set a hearing date for the application. On September 17, 2010, the Board confirmed to the parties that the case had been placed on the hearing schedule for February 3, 2011 in Ottawa, Ontario. On January 5, 2011, the Board confirmed the hearing date of February 3, 2011 and the hearing location to the parties. The notice contained the following statement:

[Translation]

...

*ALSO NOTE that, should you fail to appear at the hearing or any subsequent reconvening of the hearing, the adjudicator may decide the matter based on the evidence and arguments adduced before her at that time without giving you any further notice.*

...

[Emphasis in the original]

[10] That notice was sent to the complainant by Priority Post. According to information obtained from Canada Post, the complainant accepted delivery of the letter on January 9, 2011.

[11] On January 21, 2011, the Board sent a second notice to the parties indicating the date of the hearing as February 3, 2011 but changing its location to the Board's hearing rooms. That notice was sent to the complainant by Priority Post. According to information obtained from Canada Post, the complainant acknowledged receiving the letter on January 28, 2011. The notice contained the same statement about the requirement to appear.

[12] On January 21, 2011, counsel for the employer emailed the Board, requesting that the complainant respond to its objection of January 8, 2010 about the extension of time. The employer also raised the issue of the Board's jurisdiction to hear a compensation grievance, given the absence of bargaining agent support. On January 21, 2011, the Board asked the complainant to respond to the employer's correspondence.

[13] On January 26, 2011, as the Vice-Chairperson seized with the file, I asked a registry officer of the Board to contact the complainant and ask her to formulate her grievance concisely and to indicate the remedy sought.

[14] The registry's two requests were not answered. On January 31, 2011, the registry officer tried to contact the complainant by telephone; the telephone number was no longer in service.

[15] At 09:30 on February 3, 2011, the complainant was not present at the hearing. At 10:00, I informed the employer that it could leave because every indication was that the complainant would not appear.

### **Reasons**

[16] Pursuant to section 45 of the *Public Service Labour Relations Act*, enacted by the section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, the Chairperson has authorized me, in my capacity as Vice-Chairperson, to exercise any of his powers or to perform any of his functions under paragraph 61(b) of the *Public Service Labour Relations Board Regulations* to hear and decide this application for an extension of time.

[17] It should be noted that the date of February 3, 2011 was set after consulting with the parties and that the complainant was informed of that date on September 17, 2010. Subsequently, the Board twice confirmed, on January 5 and 21, 2011, that the hearing would take place on February 3, 2011. The evidence that the complainant received the notices in question is in the Board's file.

[18] On January 31, 2011, since the complainant had not responded to the emails of January 21 and January 26, 2011, the Board's registry officer tried to contact her but was unsuccessful because her telephone number was no longer in service. A note to that effect appears in the file. Without a telephone number, the Board was unable to contact the complainant to remind her to appear — normal practice when a party does not appear at a hearing — before suspending the hearing.

[19] In light of her absence on the hearing day, and because no advance notice was given of her absence, I conclude that the complainant chose not to pursue her application for an extension of time to file a grievance. In light of that conclusion, the application for an extension of time is dismissed.

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

*(The Order appears on the next page)*



**Order**

[21] The application for an extension of time to file a grievance, made on November 16, 2009, is dismissed.

February 16, 2011.

PSLRB Translation

**Michele A. Pineau,  
Vice-Chairperson**