Date: 20131115

File: 561-34-499

Citation: 2013 PSLRB 143

Public Service Labour Relations Act

Before a panel of the Public Service Labour Relations Board

BETWEEN

FRANCINE BOUCHARD

Complainant

and

SYLVIE LAHAIE, ANDRÉ BÉLANGER, MICHEL DÉSILETS, PATRICK SIMONEAU, JEAN-YVES MARTEL, DANIÈLE BÉDARD, JEAN-PIERRE FRASER, BETTY BANNON, PUBLIC SERVICE ALLIANCE OF CANADA AND UNION OF TAXATION EMPLOYEES, LOCAL 10005

Respondents

Indexed as
Bouchard v. Lahaie et al.

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

REASONS FOR DECISION

Before: Stephan J. Bertrand, a panel of the Public Service Labour Relations Board

For the Complainant: Lise Pronovost

For the Respondents: James Cameron, counsel

Heard at Montreal, Quebec,
September 5, 2013.
(PSLRB Translation)

Complaint before the Board

[1] On January 12, 2011, Francine Bouchard ("the complainant") filed an unfair labour practice complaint under section 190 of the *Public Service Labour Relations Act* ("the *Act*") against Sylvie Lahaie, André Bélanger, Michel Désilets, Patrick Simoneau, Jean-Yves Martel, Danièle Bédard, Jean-Pierre Fraser, Betty Bannon, the Public Service Alliance of Canada, and the Union of Taxation Employees, Local 10005 ("the respondents").

[2] The Public Service Labour Relations Board ("the Board") scheduled a hearing for September 19 to 21, 2011, in Trois-Rivières, Quebec. During the hearing, the parties agreed to participate in a mediation session and reached a settlement agreement on September 19, 2011. Therefore, the hearing was adjourned so that the parties could implement the terms of their memorandum of agreement.

[3] On February 29, 2012, the complainant requested a hearing so that she could obtain a declaration from the Board annulling the settlement agreement of September 19, 2011, on the basis that the respondents did not comply with one of the terms of the memorandum of agreement.

[4] On March 19, 2013, the Board notified the parties that the complainant's application for annulment would be heard on September 5 and 6, 2013, in Montreal, Quebec, and that those hearing dates would be considered "[translation] final."

The September 5, 2013, hearing

[5] The day before the hearing, precisely at 15:24 on September 4, 2013, the complainant emailed the Board, stating that because of certain health problems of her representative, neither she nor Ms. Pronovost would appear at the hearing. She requested that the hearing be postponed. At 16:27, the respondents opposed the request for postponement on the grounds that it was untimely, that there were no details or medical evidence accompanying it, and that the application for postponement, *a priori*, was frivolous and vexatious. At 16:30, the Board's registry officer notified the parties that it was impossible to obtain a direction from me until the next day and that any request for postponement would have to be presented in person at the hearing.

[6] On September 5, 2013, I began the hearing at 09:30 as agreed. Mr. Cameron was present with one of his clients; no one appeared for the complainant. The Board had received no call or email from the complainant between the email sent at 16:30 on September 4, 2013, and the start of the hearing. Even though the complainant had received no confirmation of the Board's handling of her request for postponement, she did not attend the hearing or contact the Board.

[7] Therefore, I adjourned the hearing until 13:00 so that the Board's registry officer could contact the complainant or her representative and schedule a teleconference about the request for postponement. It should be noted that the complainant and her representative had the same telephone number and the same mailing address. The registry officer was unable to reach either of them by telephone. She then emailed them about holding a teleconference at around 09:52.

[8] Since I received no reply from the complainant, I reconvened the hearing at 13:00 and asked the respondents for their position. Mr. Cameron stated that they still opposed the request given the absence of any explanation or communication from the complainant, the vexatious nature of her application for annulment, and the fact that the respondents were ready to proceed and had incurred travel expenses.

[9] Therefore, I heard the respondents' arguments and evidence in the complainant's absence, as specified in the notice of hearing sent to the parties on July 23, 2013.

Summary of the respondents' evidence

[10] The respondents filed in evidence the memorandum of agreement signed on September 19, 2011, by the complainant and her representative, Ms. Pronovost, and by Mr. Cameron for the Public Service Alliance of Canada, Betty Bannon for the Union of Taxation Employees, and André Bélanger for Local 10005 of the Union of Taxation Employees. It is half a page in length, not including the signatures, and it contains nothing more than the following five provisions:

(i) the complainant will withdraw her complaint (561-34-499);

(ii) the respondents will pay the complainant a certain lump sum before October 5, 2011;

(iii) two apology letters, one signed by John Gordon for the Public Service Alliance of Canada and the other by Betty Bannon for the Union of Taxation Employees, will be given to the complainant;

(iv) the parties will sign a release; and

(v) the parties will keep the agreement and its contents confidential.

[11] According to the respondents, they have complied with all provisions of the memorandum of agreement except the first, the implementation of which depends solely on the complainant.

[12] For the second provision of the memorandum of agreement, the respondents provided evidence of the cheque issued in the complainant's name on October 5, 2011, for an amount corresponding to that contemplated by clause 2 of the memorandum. They also filed in evidence the FedEx receipt showing that the complainant received the cheque. As will be noted later, the complainant did not dispute the payment of the lump sum provided for in clause 2 of the memorandum of agreement.

[13] With respect to the fourth and fifth provisions of the memorandum of agreement, the respondents stated that the same parties signed the release referred to in clause 4 that signed the memorandum of agreement and that the respondents have always kept the memorandum of agreement and its contents confidential since it was signed.

[14] With respect to the third provision of the memorandum of agreement, which is at the heart of this dispute, the respondents stated that they signed the apology letters referred to in clause 3 of the memorandum and that they gave them to the complainant more than once. According to the respondents, they first gave the letters in question to the complainant when the memorandum of agreement was signed, that is, on September 19, 2011. The letters were attached to the memorandum. The respondents also stated that at the complainant's request, they sent the same letters on stationery containing the Alliance letterhead in the case of Mr. Gordon's letter and on stationery containing the Union of Taxation Employees letterhead in the case of Ms. Bannon's letter. Copies of those letters were filed in evidence.

[15] According to the respondents, Mr. Gordon's letter, with the Public Service Alliance letterhead, was given to the complainant in December 2011, a fact that the

complainant has never disputed. Ms. Bannon's letter, with the Union of Taxation Employees letterhead, was sent to the complainant three times. During a teleconference on February 3, 2012, since the complainant alleged that she had still not received an original copy, the respondents agreed to send the letter to the Board so that the Board could take charge of sending it to the complainant. That was done on February 14, 2012, as shown by the email from the Board's registry officer to that effect.

Summary of the respondents' arguments

[16] The respondents argued that not only did they comply with all the provisions of the memorandum of agreement, as the documentary evidence clearly shows, but also they went beyond their obligations to close this file. The respondents reminded me that although clause 3 of the memorandum of agreement provided for the signing of the apology letters attached to the memorandum, those letters were not printed on paper with the letterhead of any union and that no provision of the memorandum required it. The respondents also reminded me that no time limit was specified for sending the letters.

[17] According to the respondents, the complainant's annulment application is frivolous and vexatious and nothing less than an abuse of process.

Communication from the complainant after the hearing

[18] On September 6, 2013, the complainant replied to the Board's email of the day before. She stated that it would have been impossible for her to participate in a teleconference on that day unless she had done so from a nurse's station or a telephone booth.

[19] At my request, the Board's registry officer then asked the complainant to provide certain details of her representative's health, including (i) the exact nature of the medical condition that had prevented her from appearing at the hearing, (ii) a confirmation of whether she had visited a medical clinic or hospital centre, (iii) a confirmation of whether she had been hospitalized, and (iv) a confirmation of whether she was at home and was able to participate in a teleconference the following week.

[20] The complainant replied as follows: "[translation] . . . I really do not see the reason for all these questions. . . ." She provided no other reply to the Board.

[21] On September 9, 2013, at my request, the Board's registry officer sent the complainant the following email:

> [Translation]
>
> *Since you did not reply to the Board's emails or appear at the hearing as convened, Board Member Bertrand heard the respondents' evidence and position in your absence on September 5, 2013. However, if by 17:00 today you provide the details requested in our email of September 6, 2013, at 11:19, and if the explanations provided justify your absence from the hearing on September 5, 2013, Board Member Bertrand may decide to schedule another hearing day or ask you to provide written arguments to ascertain your position. However, if you do not comply with this direction within the required time, Board Member Bertrand may then render his decision solely on the basis of the evidence and arguments presented by the respondents on September 5.*

[22] The complainant replied to the registry officer's email and provided some details on her representative's health. However, she refused to provide the other confirmations, namely, whether her representative had gone to a medical clinic or hospital centre, whether she had been hospitalized, and whether she was at home and was able to participate in a teleconference the following week. The complainant described those questions as overly personal, excessive and unfair.

[23] On September 26, 2013, once again at my request, the registry officer asked the complainant to provide dates on which she would be available for a one-day hearing in the six months following that letter. The complainant replied that she would not be available in the next six months because her representative would be out of the country. Although the complainant stated that her representative's health did not permit her to remain in Canada during the period in question, she provided no documentary evidence to that effect.

[24] Given the complainant's position in this case, I chose to render a decision based on the evidence and arguments presented by the respondents at the hearing and the correspondence on file from the complainant and her representative.

Complainant's correspondence filed before the hearing

[25] On October 6, 2011, the complainant's representative wrote to the Board to inform it that the respondents had not complied with the provisions of the memorandum of agreement, without specifying which ones. She also requested that the complainant's unfair labour practice complaint, which she filed on January 12, 2011, be heard. It should be noted that it is clear from the documentary evidence that the respondents had already signed the apology letters and given them to the complainant on September 19, 2011 (clause 3), and that the parties had also signed the release (clause 4). In addition, the complainant did not allege any breach of confidentiality (clause 5), thus suggesting that the only provision not complied with was the payment of the lump sum, since the implementation of clause 1 depended solely on the complainant.

[26] In her correspondence of November 15, 2011, the complainant's representative stated that only one part of the memorandum of agreement had been complied with, namely, the monetary part (clause 2). Without referring to the wording of the memorandum of agreement, she added that the respondents had not complied with clause 3 because the apology letters had not been "[translation] written on the letterhead of the appropriate union and duly signed by the presidents."

[27] In a letter dated December 22, 2011, the complainant's representative once again alleged that clause 2, about the signing of the apology letters, had not been complied with, again without any link to the wording of the memorandum of agreement, which does not require the use of any letterhead or set a time limit for sending the letters to the complainant.

[28] On January 11, 2012, the complainant's representative again wrote to the Board. In that correspondence, she confirmed that she had received Mr. Gordon's letter on Public Service Alliance of Canada letterhead, but she continued to allege that clause 3 had not been complied with because the complainant had not been sent a letter on Union of Taxation Employees letterhead.

[29] In an email dated January 16, 2012, the complainant's representative maintained that she had still not received the letter on Union of Taxation Employees letterhead despite earlier confirmation from Mr. Cameron that the letter had indeed been mailed to the complainant's address during the 2011 holiday season.

[30] It should be noted that on January 18, 2012, Mr. Cameron emailed a copy of Ms. Bannon's letter that was identical to that attached to the memorandum of agreement but that time on Union of Taxation Employees letterhead.

[31] In her correspondence of January 20, 2012, the complainant's representative indicated that Mr. Cameron's letter of January 18 did not comply with the provisions of the memorandum of agreement because it had not been "[translation] signed by a person in authority" and had not been received by the complainant "[translation] within the required time." Once again, the complainant's representative did not see fit to refer the Board to the wording of the memorandum of agreement that supported her position. Had she gone through that exercise, she would have seen that the memorandum of agreement provides for nothing more than the signing of an apology letter dated September 19, 2011, by Ms. Bannon "[translation] on behalf" of the national president of the Union of Taxation Employees. Neither the memorandum nor the attachment requires that the letter be signed by another person in authority or that it be sent to the complainant within a certain time. It should be noted that the Board received an original copy of the letter on February 10, 2012, and that the Board's registry officer forwarded it to the complainant on February 14, 2012.

Reasons

[32] As stated by the Federal Court of Appeal in *Amos v. Canada (Attorney General)*, 2011 FCA 38, an adjudicator has jurisdiction under the *Act* to determine whether a settlement agreement is final and binding, whether a party has complied with the settlement agreement, and, if it was not complied with, the remedial order to make in the circumstances.

[33] It has been clearly established in this case that the parties reached and signed a settlement agreement on September 19, 2011. The memorandum of agreement filed in evidence specifically provides for the following:

(i) the complainant will withdraw her complaint (561-34-499);

(ii) the respondents will pay the complainant a certain lump sum before October 5, 2011;

(iii) two apology letters, one signed by John Gordon for the Public Service Alliance of Canada and the other by Betty Bannon for the national

president of the Union of Taxation Employees, will be given to the complainant;

(iv) the parties will sign a release; and

(v) the parties will keep the memorandum of agreement and its contents confidential.

[34] Obviously, the implementation of the first provision of the memorandum of agreement depended solely on the complainant, and it cannot be alleged that the respondents breached that provision.

[35] As for the fourth provision, the documentary evidence clearly established that the same parties signed the release provided for in clause 4 of the memorandum of agreement that signed the memorandum of agreement. Moreover, the complainant has never alleged that that provision was not complied with.

[36] With respect to the fifth provision of the memorandum of agreement, the complainant never alleged that it was not complied with, and none of the documents I reviewed suggests any breach of confidentiality since the memorandum was signed.

[37] Therefore, for the agreement to not have been complied with, only the second provision of the memorandum of agreement, dealing with the lump sum, or the third provision, dealing with the apology letters, can have been involved.

[38] With respect to the second provision of the memorandum of agreement, the documentary evidence demonstrated that a cheque for an amount corresponding to that provided for in clause 2 of the memorandum was issued in the complainant's name on October 5, 2011, by the Public Service Alliance of Canada. According to a receipt from the FedEx courier company, the complainant received that cheque on October 12, 2011. Although the complainant did not dispute the payment of the lump sum in question, the fact remains that the memorandum of agreement provided for the respondents to make a "[translation] payment" before October 5, 2011.

[39] However, in light of the absence of clear evidence on that point, I cannot conclude that the one-week delay to pay the lump sum caused prejudice to the complainant. No prejudice was alleged in her representative's considerable correspondence. In the circumstances, I consider the delay minimal. Furthermore, no

persuasive evidence suggests that bad faith on the part of the respondents was the reason for the delay in question. Despite its size and the complexity of its organizational structure, the Public Service Alliance of Canada was able to issue a cheque in the complainant's name on October 5, 2011, two weeks after the memorandum of agreement was signed. In addition, the cheque was delivered to the complainant on October 12, 2011, three weeks after the memorandum was signed. Nothing suggests that the Alliance did not act diligently or in good faith.

[40] I do not consider a one-week delay in payment so fundamental to respecting the memorandum of agreement between the parties in the circumstances that it requires some redress. In the absence of bad faith by the respondents or prejudice to the complainant, I find that such a delay is a minor defect in the implementation of the memorandum of agreement. On that point, I fully agree with the adjudicator's following comments in *Zeswick v. Deputy Head (Correctional Service of Canada)*, 2012 PSLRB 8, at para 49:

> *[49] . . . To transpose this into a fundamental breach of the Agreement would place a standard of perfection on parties when they set about to implement settlement agreements. Timeliness in labour relations is important, but a standard of perfection is not necessary to give force to an the* [*sic*] *agreement itself and nor is it desirable to impose this standard on parties who are, after all, attempting to resolve problems with a minimum of time and cost.*

[41] As for the third provision of the memorandum of agreement, the documentary evidence demonstrated that the memorandum of agreement provides for nothing more than the signing of "[translation] apology letters (attached)," consisting of a first letter from National President of the Public Service Alliance of Canada John Gordon, which the complainant confirmed she received, and a second letter, dated September 19, 2011, by Betty Bannon sent "[translation] on behalf of" the Union of Taxation Employees. The complainant's strongest challenge was to that letter. According to her, Mr. Cameron's letter, sent on January 18, 2012, did not comply with the provisions of the memorandum of agreement because it was not "[translation] signed by a person in authority" and because she did not receive it "[translation] within the required time." However, as I have already stated in this decision, the complainant's representative never referred the Board to the wording of the memorandum of agreement that supported such a position, which is not surprising. Neither the memorandum nor the attachment provides that the letter had to be signed

by another person in authority, written on Union of Taxation Employees letterhead or sent to the complainant within a certain time. I have no reason to believe that the memorandum of agreement contains incorrect information or a position that one of the parties did not accept. Were that so, one would expect that the memorandum of agreement would not have been signed. The reality is that the parties signed the memorandum of agreement, including both of their representatives, and that its provisions were complied with within what I consider a reasonable time, keeping in mind the specific circumstances of this case. Only one provision has not been complied with, namely, the one stating that the complainant will withdraw her complaint (561-34-499).

[42] I find that the respondents have not only respected all the provisions of the memorandum of agreement, as shown by the documentary evidence, but also that they went beyond their obligations by providing the letters referred to in clause 3 of the memorandum of agreement on paper containing the letterheads of the respective unions, which is not specified in the memorandum.

[43] I also agree with the respondents' position that the complainant's annulment application is frivolous and vexatious and nothing less than an abuse of process.

[44] For all of those reasons, the Board makes the following order:

(The Order appears on the next page)

Order

[45] I declare that the memorandum of agreement signed by the parties on September 19, 2011, is final and binding.

[46] I declare that the respondents have complied with the terms of the memorandum of agreement and that the complainant has not complied with the first term of the memorandum of agreement.

[47] The complainant's application to annul the memorandum of agreement is denied, and I order this file closed.

November 15, 2013.

PSLRB Translation

Stephan J. Bertrand,
a panel of the Public Service
Labour Relations Board