

Date: 20130212

File: 561-02-526

Citation: 2013 PSLRB 13



*Public Service
Labour Relations Act*

Before a panel of the
Public Service Labour
Relations Board

BETWEEN

CATHERINE PERRON

Complainant

and

CUSTOMS AND IMMIGRATION UNION

Respondent

Indexed as
Perron v. Customs and Immigration Union

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

REASONS FOR DECISION

Before: Renaud Paquet, a panel of the Public Service Labour Relations Board

For the Complainant: Herself

For the Respondent: Chantal Homier-Nehme

Heard at Ottawa, Ontario,
January 21 and 23, 2013.
(PSLRB Translation)

I. Complaint before the Board

[1] On August 15, 2011, Catherine Perron (“the complainant”) filed a grievance against the HQ District Branch (“the Branch”) of the Customs and Immigration Union (“the CIU” or “the respondent”), a component of the Public Service Alliance of Canada (PSAC). The complainant founded her complaint on paragraph 190(1)(g) of the *Public Service Labour Relations Act* (“the Act”). She claims that the respondent failed its duty of fair representation, imposed on it by the Act. The following provisions of the Act apply to this complaint:

...

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

...

(g) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.

(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.

...

185. *In this Division, “unfair labour practice” means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*

...

187. *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*

...

[2] In her complaint, the complainant wrote that Francine Stuart, the Branch President, informed her on May 16, 2011 that the Branch would no longer represent her and that she would have to contact the CIU National Office. The complainant claimed that the Branch’s decision to no longer represent her was arbitrary and that it was motivated by hostile feelings towards her.

II. Summary of the evidence

[3] The complainant testified and submitted 15 documents in evidence, some of which contained several emails that she either wrote or received. The respondent called Michelle Tranchemontagne and Bruno Loranger to testify. Ms. Tranchemontagne is Director of the National Office and Legal Counsel for the CIU. Mr. Loranger is a labour relations officer for the CIU. The respondent submitted eight documents into evidence, each including written exchanges with or about the complainant.

[4] In November 2009, the complainant contacted Annie Rochon, the Branch's union representative, to inform her of problems she was having at work with her colleagues. According to the complainant, Ms. Rochon did not help her and refused to represent her. In addition, in March 2010, Ms. Rochon filed a complaint against the complainant with the employer and filed a second one on June 13, 2011. The complainant also claimed that Ms. Rochon "excluded" her from union representation in February 2010. The complainant also filed a harassment complaint against Ms. Rochon with the employer.

[5] On June 7, 2010, the complainant contacted Ron Moran, the CIU National President at that time. She informed him that she was being harassed at work by her colleagues and that the employer assigned her to other duties, which meant a loss of earnings for her. She also informed him that she had no union representation. Earlier that same day, she spoke with Ms. Stuart, seeking union representation, which she stated that she was unable to obtain. Ms. Stuart was Branch president at that time.

[6] On October 13, 2010, the complainant turned to Robert LaFortune, a Branch union representative and asked him to represent her. Mr. LaFortune refused on the ground that he was not the union representative assigned to the building where she worked. According to the complainant, Mr. LaFortune represented other employees from that building.

[7] On October 28, 2010, Lynn Smith-Doiron, a Branch union representative, told the complainant that Ms. Stuart asked her to represent the complainant. On November 3, 2010, Ms. Smith-Doiron met with the complainant. She wanted Ms. Smith-Doiron to file a grievance on her behalf or to help her file it. Instead, Ms. Smith-Doiron emailed the employer, informing it of some of the complainant's concerns.

[8] On October 26, 2010, the complainant contacted Ms. Tranchemontagne. She complained that she did not receive representation from the CIU and that she was becoming rather frustrated. On November 18, 2010, the complainant wrote to Ms. Tranchemontagne and explained to her, in detail, the problems that she was having at work and mentioned that it was impossible for her to obtain help from the Branch's representatives. She also informed her that she needed union representation for a disciplinary meeting scheduled for November 23, 2010. A short time later, the complainant and Ms. Tranchemontagne had a long phone conversation. The complainant stated that, during the conversation, Ms. Tranchemontagne told her that she should "[translation] count herself lucky for still having a job." Ms. Tranchemontagne denied saying such a thing.

[9] In October and November 2010, the complainant repeatedly tried to reach Ms. Smith-Doiron to file a grievance within the prescribed time. Receiving no response, she wrote to Mr. Moran and Ms. Tranchemontagne on November 23 and asked for their help. That same day, Mr. Moran forwarded the complainant's request to Ms. Smith-Doiron, who replied on November 24, 2010. Ms. Smith-Doiron suggested that the complainant complete the grievance form herself and that she put Ms. Smith-Doiron's name as the representative.

[10] The complainant was called to a disciplinary meeting that was supposed to be held on January 19, 2011. It was postponed to January 24, 2011. She asked Ms. Smith-Doiron to represent her. Ms. Smith-Doiron did not contact the complainant before the meeting, but she did attend. According to the complainant, Ms. Smith-Doiron was very poorly prepared to face the employer. According to the complainant, Ms. Smith-Doiron had an unpleasant attitude toward to her and took the employer's side instead of hers, which she should have done instead. As a result, the complainant was subject to a disciplinary measure and was unable to file her grievance due to a lack of union representation.

[11] Between March and May 2011, the complainant had several exchanges with the Branch or the CIU about two grievances that were at the final level of the grievance process. On April 27, 2011, Mr. Loranger wrote to her. He stated that grievances at the final level were heard in an order of priority that puts terminations first, then suspensions and, finally, human rights grievances. On April 29, 2011, Mr. Loranger wrote to the complainant. He stated that her grievances were not a priority. On May 11,

2011, the complainant complained to Mr. Moran that her grievances were not a priority for the CIU and asked that they be dealt with as soon as possible. Mr. Moran transferred her request to Ms. Tranchemontagne.

[12] In March 2011, Mr. Loranger dealt with the complainant's grievances at the final level of the grievance process. He represented the grievances before the employer in June or July 2011. After the employer dismissed the grievances, Mr. Loranger contacted the PSAC to have them referred to adjudication, which occurred in October 2011. Mr. Loranger testified that one of his duties was to represent Branch members at the final level of the grievance process. He never refused to speak to a Branch member who asked for advice or help. Mr. Loranger testified that he kept notes of his discussions with CIU members and that he did not have any notes from the discussions he allegedly had with the complainant between May and August 2011. He concluded that the complainant never called him to ask him for help, aside from the exchanges they might have had about her grievances at the final level.

[13] On May 11, 2011, the complainant asked Michel Renaud if he were still a union representative. He told her that she had to contact Ms. Stuart, who would choose a representative for her. On May 13, 2011, the complainant asked Ms. Stuart to assign Mr. Renaud as her union representative.

[14] On May 16, 2011, Ms. Stuart informed the complainant in writing that the Branch would no longer represent her and that, if she needed help, she should contact the CIU National Office. On the morning of May 17, 2011, the complainant asked Ms. Stuart to provide her with the reasons for her decision. In the afternoon, Ms. Stuart wrote to her. She stated that she was the only person entitled to assign cases to the Branch's union representatives. She also wrote that the complainant had already had Mr. LaFortune, Ms. Rochon and Ms. Smith-Doiron as representatives and that the complainant was never satisfied. Ms. Stuart added that the union representatives were volunteers. Finally, she wrote that the Branch was short resources and that the complainant should refer to the CIU National Office for her representation needs. Later that same day, the complainant replied to Ms. Stuart, stating that she did not agree with her analysis. She told Ms. Stuart that Ms. Rochon refused to represent her, that Mr. LaFortune was unable to represent her due to a lack of authorization from the Branch and that Ms. Smith-Doiron did nothing to help her, on the contrary. The

complainant also testified that it was not true that she was always unsatisfied with the representation she received from the Branch.

[15] Mr. Moran received copies of the emails exchanged between the complainant and Ms. Stuart on May 17, 2011. That same day, he wrote to Ms. Stuart, copying Ms. Tranchemontagne and Mr. Loranger, to ensure that the duty of fair representation imposed on the union by the *Act* had been respected. On June 13, 2011, Ms. Stuart emailed the complainant, informing her that she spoke with Mr. Moran and that she asked him to note that Ms. Smith-Doiron was the union representative assigned to the complainant's case. After receiving that email, the complainant left a telephone message for Mr. Moran, who returned the call by email on June 17, 2011. He wrote that the CIU National Office had limited resources and that he could not represent his members at the local level.

[16] Ms. Tranchemontagne testified that, at the CIU, only Branch representatives have the right to file or sign grievances at the local level and to provide representation at the first three levels of the grievance process. Representation at the final level is the responsibility of the CIU National Office. She recalled explaining to the complainant that she should contact the Branch for representation at the local level. Ms. Tranchemontagne also testified that, as of May 2011, she was not concerned about the representation offered to the complainant because she knew that Mr. Loranger was handling it.

III. Summary of the arguments

A. For the complainant

[17] The complainant again stated that the respondent failed its duty of fair representation multiple times by refusing to represent her when she expressed the need or by offering her poor representation.

[18] The complainant referred me to the following decisions: *Jutras Otto v. Brossard and Kozubal*, 2011 PSLRB 107, and *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 95. She also referred me to an undated article from *La Presse* about mobbing.

[19] During the hearing, the complainant read several sections of the cited decisions and argued that, in them, the Board agreed to review events that occurred before the

90-day period prescribed for filing a complaint. She also cited sections of the *La Presse* article to explain mobbing, a mobber's goals and the adverse effects it has on victims.

B. For the respondent

[20] The respondent claimed that it in no way failed its duty of fair representation. The key element of the complaint is an email dated May 16, 2011 in which the Branch informed the complainant that it would no longer represent her. However, she could still have obtained union representation at that time. In fact, in May 2011, Mr. Loranger handled her case. After May 16, 2011, she could have called Mr. Loranger for specific representation needs, but she never did. Then, on June 13, 2011, the Branch informed her that Ms. Smith-Doiron was the union representative assigned to her.

[21] The respondent referred me to the following decisions: *Bahniuk v. Public Service Alliance of Canada*, 2007 PSLRB 13; *Ouellet v. Luce St-Georges and Public Service Alliance of Canada*, 2009 PSLRB 107; *Panula v. Canada Revenue Agency and Bannon*, 2008 PSLRB 4; and *Exeter v. Canadian Association of Professional Employees*, 2009 PSLRB 14.

IV. Reasons

[22] The complainant founded her complaint on several incidents that occurred between November 2009 and May 2011. I allowed her to submit them into evidence as she wished but informed her that the 90-day period provided for in subsection 190(2) of the *Act* must be strictly observed.

[23] Since the complaint was filed on August 15, 2011, it must deal with incidents or events that occurred between May 15 and August 15, 2011. Anything that happened before then could help me understand the context of the events of and after May 16, 2011. However, I cannot conclude that one or more of the events of before May 2011 were unfair practices and breaches of the respondent's duty of fair representation because they occurred well before the 90-day period in which to file a complaint.

[24] The complainant introduced evidence of her relationship with Ms. Rochon and of how Ms. Rochon treated or represented her in 2009 and 2010. She also introduced evidence of her exchanges with the Branch and Mr. Moran about union representation received or not received in 2010 and in early 2011. That evidence helped me

understand the context of the events of May 2011 but could not be considered a violation of the *Act* because it referred to incidents that occurred before May 17, 2011.

[25] In April 2011, Mr. Loranger informed the complainant that her grievances were not a priority based on the order of representation at the final level of the grievance process. That incident occurred before the 90-day period prescribed for filing a complaint. Additionally, I note that nothing prevents a union from prioritizing the order in which it provides grievance representation, as long as the order is based on neither arbitrary nor discriminatory criteria. In addition, the evidence shows that, when the complaint was filed in August 2011, the CIU had already represented the complainant in her grievances before the employer.

[26] On May 16, 2011, Ms. Stuart informed the complainant that the Branch would no longer represent her. The evidence shows that the complainant read that email at the latest on May 17, 2011, which is just within the time provided for in subsection 190(2) of the *Act*. Ms. Stuart justified her decision by stating that she had already assigned Mr. LaFortune, Ms. Rochon and Ms. Smith-Doiron as representatives for the complainant and that the complainant was never satisfied. She added that the Branch was short resources and that the complainant would have to contact the CIU National Office for her representation needs. After receiving a copy of the exchange between the complainant and Ms. Stuart, Mr. Moran wrote to Ms. Stuart that same day to ensure that the duty of fair representation imposed on the union by the *Act* had been respected. On June 13, 2011, Ms. Stuart emailed the complainant, informing her that Ms. Smith-Doiron was the union representative assigned to her case. Ms. Tranchemontagne testified that only Branch representatives had the right to file or represent grievances at the local level, up to the third level of the grievance process. Finally, Mr. Loranger testified that, between May and August 2011, the complainant never called him to ask him for help, with the exception of their exchanges about her grievances at the final level.

[27] The facts summarized in the preceding paragraph are the only facts relevant to deciding this complaint as they refer directly to it and as they are applicable to the May to August 2011 period.

[28] The only reasons that explain the Branch's refusal to represent the complainant are contained in Ms. Stuart's May 17, 2011 email. No one from the Branch testified before me. The complainant testified that some of the arguments made in the May 17,

2011 email were inaccurate. The respondent did not challenge that part of her testimony. Nevertheless, the May 17, 2011 email indicates to me that the Branch was frustrated with the fact that the complainant never seemed satisfied with the representation she received. The evidence before me leads me to conclude that the Branch refused to represent the complainant simply because she had become a “difficult client.” That is not a valid reason for refusing to represent a union member and for not complying with the duty of fair representation imposed by the *Act*. Nothing in the evidence adduced leads me to believe that the complainant refused to cooperate with the union or that her behaviour was such that it became extremely difficult to represent her. If that were the case, I would not find that the union failed to fulfill its duty of fair representation.

[29] The Branch is a section of the CIU, which in turn is an administrative division of the bargaining agent. As such, both must comply with the *Act*, particularly with respect to the duty of fair representation. They cannot for arbitrary reasons refuse to represent a member whom they do not get along with well or who might not necessarily share an opinion with them. A union is not obliged to represent its members at all times. It has the right to refuse to represent one of its members on a grievance if it does not agree with it or if the member does not cooperate with the union.

[30] Ms. Stuart’s May 16 and 17, 2011 emails are clear. The Branch refused to represent the complainant from then on. Since local representation at the CIU is the sole responsibility of the Branch, the complainant was refused local representation. Mr. Moran, CIU President, wrote to Ms. Stuart on June 17, 2011 to ensure that the duty of fair representation was being respected. Ms. Stuart corrected that on June 13, 2011, following Mr. Moran’s intervention. Between May 17 and June 13, 2011, the union violated its duty of representation.

[31] The union defended itself by arguing that Ms. Perron could have called Mr. Loranger for specific representation needs but never did. That is not the issue. She did not have to prove to me that the refusal of representation caused her any harm or that it was associated with a specific request on her part. The bargaining agent’s administrative level responsible for representing members such as the complainant had clearly written to her, stating that it would not represent her. It was not necessary

for the complainant to contact another union level, especially since the union clearly told her that responsibility for the representation she sought belonged to the Branch.

[32] The evidence shows that the union failed to fulfill its duty of fair representation over a period of roughly one month. The union corrected it on June 13 and complied with the *Act* from that point. The evidence shows that, at that time, Mr. Loranger, from the CIU National Office, continued to represent the complainant on her grievances at the final level of the grievance process. Although the union failed to fulfill its duty for about one month, the complainant never demonstrated that it harmed her, for example, by preventing her from exercising her rights, being represented or hiring someone to represent her. Therefore, my finding that the respondent violated the *Act* suffices as the order, and I will not grant the complainant any other remedy.

[33] In the evidence that she submitted, the complainant also referred to a harassment complaint that Ms. Rochon filed against her in June 2011. The complainant did not demonstrate to me how that complaint could be a violation of the duty of fair representation incumbent on the union or the Branch. In her complaint, the complainant also argued that the respondent provided her with poor representation. Nothing in the evidence or the arguments that she submitted leads me to believe that she was misrepresented in the 90 days before she filed her grievance.

[34] The CIU decided that its National Office left it up to the branches to represent members at the local level and to file grievances. That is an internal union matter in which I cannot and do not wish to interfere. On the other hand, the Branch cannot take that duty lightly. It cannot refuse to represent a member for arbitrary reasons. It has the right to refuse to represent a member, but it must make that decision in good faith after thoroughly studying the case, bearing in mind the importance of the grievance or complaint and its legitimate union interests.

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

(The Order appears on the next page)

V. Order

[36] The complaint is allowed.

[37] The respondent violated section 187 of the *Act* by failing to fulfill its duty to provide the complainant with fair representation.

February 12, 2013.

PSLRB Translation

**Renaud Paquet,
a panel of the Public Service Labour
Relations Board**