Date: 20130809

File: 561-02-579

Citation: 2013 PSLRB 96

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

NATHALIE CRÊTE

Complainant

and

JEAN-PIERRE OUELLET AND PUBLIC SERVICE ALLIANCE OF CANADA

Respondents

Indexed as
Crête v. Ouellet and Public Service Alliance of Canada

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

REASONS FOR DECISION

Before: Linda Gobeil, Vice-Chairperson

For the Complainant: Herself

For the Respondents: Goretti Fukamusenge, Public Service Alliance of Canada

Decided on the basis of written submissions filed July 19, August 15 and 28, and September 4, 2012, and June 27 and July 10, 2013.
(PSLRB Translation)

Matter before the Board

[1] On July 19, 2012, Nathalie Crête ("the complainant") filed a complaint with the Public Service Labour Relations Board ("the Board") under paragraph 190(1)(*g*) of the *Public Service Labour Relations Act*, S.C. 2003, c. 22 ("the *Act*") against Jean-Pierre Ouellet and the Public Service Alliance of Canada ("the respondents"). At the time of the events in question, the complainant was a compensation manager at the Canadian International Development Agency. Therefore, she was a member of the Public Service Alliance of Canada ("the bargaining agent"). Mr. Ouellet was the vice-president of the bargaining agent's Local 70044.

[2] In her complaint, Ms. Crête asserted that the respondents did not represent her interests and that they had acted arbitrarily toward her. In addition, the complainant requested at the outset that the Board exercise its discretion and extend the time limit for filing her complaint because of the exceptional circumstances of her case.

[3] Essentially, the complainant alleged that the respondents did not provide her with fair and equitable representation in the face of her employees' accusations while she was a compensation manager.

[4] The complainant maintained that respondent Ouellet never verified his version of events before bringing arbitrary accusations against her, namely, by issuing her a formal demand on May 18, 2011 and by preparing and coordinating, on behalf of 10 employees, a harassment complaint against her on February 8, 2012. The complainant also alleged that the harassment complaint that respondent Ouellet allegedly prepared and coordinated resulted in her position being declared surplus.

[5] The complainant also asked that the Board excuse her for filing her complaint after the 90-day deadline set out in the *Act* because, despite numerous attempts by email and regular mail and made in person, she never received an answer from the bargaining agent, which explains the lateness in filing her complaint.

[6] In her complaint, Ms. Crête asserted that she gave "[translation] several months to the union" to settle the file.

[7] In support of her allegations, the complainant submitted appendices that refer to the formal demand and to the harassment complaint and that indicate that those events occurred on May 18, 2011 and February 8, 2012, respectively.

[8] It is important to note that the complainant did not contest being made aware of the events of May 18, 2011 and February 8, 2012 on the very days on which they occurred.

[9] On August 15, 2012, the respondents' representative pointed out that the complaint was late and should be dismissed for that reason and that it was without merit. According to the respondents' representative, the issues specified in the complaint were not presented within the 90-day time limit specified in subsection 190(2) of the *Act*, 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.*

[10] The respondents' representative maintained that the complaint is clearly outside the 90 days prescribed by the *Act* to file a complaint, given that the events that gave rise to the complaint, namely, the formal demand and the harassment complaint, date from May 18, 2011 and February 8, 2012, respectively, and that the complaint was filed on July 19, 2012.

[11] The respondents' representative argued that the period provided in subsection 190(2) of the *Act* is strict and that the *Act* does not allow for an extension. In support of her arguments, the respondents' representative referred me to the following decisions: *Castonguay v. Public Service Alliance of Canada,* 2007 PSLRB 78; *Grouchy v. Deputy Head (Department of Fisheries and Oceans*), 2009 PSLRB 92; *Exeter v. Canadian Association of Professional Employees*, 2009 PSLRB 14; *Ouellet v. Luce St-Georges and Public Service Alliance of Canada,* 2009 PSLRB 107; *Mangat v. Public Service Alliance of Canada,* 2010 PSLRB 52; and *Métayer v. Union of Taxation Employees (Public Service Alliance of Canada)*, 2011 PSLRB 88.

[12] In addition, the respondents' representative maintained that the complaint should be dismissed on its merits because the complainant failed to discharge her burden of proof. The respondents' representative asserted that the onus was on the complainant to show that the respondents acted arbitrarily, which was not done.

[13] On August 28, 2012, the complainant replied to the respondents' objection, maintaining that she acted quickly by informing the president of the bargaining agent

and the president of her component, Doug Marshall, on February 27, 2012 that she would file a complaint against Mr. Ouellet and that she had met the time limits set out in the *Union of National Employees By-laws* ("the by-laws"). The complainant also asserted that she wanted to give the bargaining agent time to respond and that under no circumstances had she abandoned her complaint. Finally, the complainant maintained that she was unaware that recourse was available under section 190 of the *Act* and that the delay was essentially due to the fact that the bargaining agent never answered her, that she was unaware of her recourse under the *Act* and that neither the employer nor the union informed her of her rights.

[14] On May 30, 2013, the Board informed the parties that the respondents' objection with respect to the time limit under section 190 of the *Act* would be dealt with first and that the parties had to make written submissions. The parties were also informed that the Board could render a decision based on their written submissions.

[15] On June 27, 2013, after reviewing the submissions received from the parties, at my request, the Board's registry wrote to the parties, requesting that the complainant provide further written submissions, if applicable, on the issue of the time limit. That letter also mentioned that the Board would decide the case based on those additional submissions and on the submissions already on file. In reply, the complainant provided additional written submissions on July 10, 2013.

[16] In those submissions of July 10, 2013, the complainant reiterated that respondent Ouellet had sent her a formal demand not to communicate with the other employees and that, on February 8, 2012, she was informed that a harassment complaint had been filed against her by respondent Ouellet on behalf of 10 employees. The complainant argued that the respondents breached their duty of representation under section 187 of the *Act.*

[17] The complainant again maintained that she had acted diligently in raising the issue and in making a complaint to the president of the bargaining agent and the president of her component against respondent Ouellet on February 27, 2012.

[18] The complainant argued that, between February 27 and July 12, 2012, she repeatedly tried to obtain answers from the bargaining agent but that, each time, she received no answer.

[19] The complainant stated that she filed a complaint with the Canada Industrial Relations Board on July 12, 2012 but that it informed her on July 19, 2012 that it did not have jurisdiction over the subject matter of her complaint.

[20] The complainant maintained that the date of the reply from the president of the bargaining agent, May 23, 2012, should be used as the starting date to calculate the 90-day time limit prescribed by the *Act*, since the president had promised her at that time to get back to her soon. As the case may be, the complainant argued that she filed her complaint within the 90-day time limit since it was filed on July 19, 2012.

[21] Finally, the complainant concluded that she acted within a reasonable time, that, even if I were to decide that she was late filing the complaint, it was not significantly late, and that refusing to grant her an extension would cause her serious harm.

Reasons

[22] It should be noted that this decision deals only with the respondent's objection, namely, that Ms. Crête's complaint was untimely, as it was not filed within the 90-day limit prescribed in section 190 of the *Act.* As noted earlier, at my request, the Board's registry asked the complainant on May 30, 2013 to present her submissions on the timeliness issue. The Board's registry also informed her on June 27, 2013 that a decision would be made based on those submissions and on the information already on file.

[23] After reviewing the file and all the parties' submissions, I concluded that I had sufficient information to render a decision on the respondents' objection with respect to the time limit stipulated in section 190 of the *Act.*

[24] The Board has rendered several decisions on the 90-day time limit issue, and it has concluded a number of times that that 90-day time limit must be respected at all times. For example, at paragraph 55 of *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, the Board wrote the following about the interpretation of subsection 190(2) of the *Act*:

> *[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.*

[25] I agree with the Vice-Chairperson's comments in *England v. Taylor et al.,* 2011 PSLRB 129, at para 16, namely, that the Board's jurisdiction in interpreting subsection 190(2) of the *Act* is somewhat limited:

> *[16] The only possible discretion for the Board when interpreting subsection 190(2) of the Act is determining when the complainant knew, or ought to have known, of the action or circumstances that gave rise to the complaint.*

[26] In *Martell v. Research Council Employees' Association and Van Den Bergh*, 2011 PSLRB 141, at para 51, the adjudicator stated, "The 90-day time limit is strict, and I have no authority to extend it."

[27] In this case, the complainant filed her complaint on July 19, 2012. However, with respect to referring her complaint to the Board, the complainant did not deny having knowledge on May 18, 2011 and February 8, 2012 of the facts giving rise to her complaint, namely, a formal demand from respondent Ouellet and his filing of a harassment complaint. Therefore, it is clear that the complainant was aware of the acts alleged against the respondent but that she failed to file her complaint within 90 days of either event.

[28] In her written submissions, the complainant explained that she wrote to the presidents of her union and of her component as early as February 27, 2012, that her delay was due to the fact that she had repeatedly tried to communicate with her union's representatives (unsuccessfully), that she was unaware of her options for recourse under the *Act*, that she complied with the deadlines prescribed by the by-laws, that the employer should have informed her of her rights and that the failure to extend the time limit would cause her serious harm.

[29] Although I understand that the complainant first tried to resolve her dispute through other means, the fact remains that to be admissible under the *Act*, the complaint should have been referred within the time limit. In my view, the fact that the complainant raised her complaints at one point with the president of the bargaining agent or the president of her component or that the by-laws permit her to file a

complaint do not change the fact that she did not involve the Board within the time specified in the *Act.*

[30] As for the complainant's assertion that the union and the employer did not inform her of her rights and that she was unaware of her options for recourse under the *Act*, I wish to make it clear that, on one hand, the union and the employer had no such obligation and that, on the other, it is a well-established principle that no one can use his or her lack of knowledge of the law to excuse missing a mandatory deadline.

[31] In her submissions dated July 10, 2013, the complainant also highlighted that the 90-day time limit should be calculated starting on May 23, 2012, the date on which the president of the bargaining agent promised to get back to her soon, which would have allowed her to file the complaint within the 90-day period.

[32] In my opinion, May 23, 2012 cannot be used as the starting point to calculate the prescribed deadline. Again, subsection 190(2) of the *Act* is clear: the complaint must be made with the Board not later than 90 days after the date on which the complainant knew of the alleged acts. However, it was admitted that the complainant was informed on the very dates of the events that gave rise to the dispute and to the complaint, namely, May 18, 2011 and February 8, 2012. As noted earlier, the time limit under subsection 190(2) of the *Act* is strict, and it should be calculated from the time the complainant becomes aware of the alleged acts. Under the circumstances, I must conclude that the complaint was referred to the Board on July 19, 2012, namely, after the 90-day deadline had lapsed.

[33] The 90-day time limit for filing a complaint with the Board began when the complainant became aware of the acts she accused the respondent of committing, namely, on May 18, 2011 and February 8, 2012. The complainant failed to. If she thought that respondent Ouellet, by sending her a formal demand and by coordinating a harassment complaint, did not fulfill his duty of fair representation, she should have filed a complaint with the Board at that time. The *Act* is clear: a complaint must be filed within the 90-day deadline. Under the circumstances, given that the *Act* does not permit me to extend that deadline, I do not need to decide the merits of the complaint.

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

(The Order appears on the next page)

Order

[35] The complaint is dismissed.

[36] The file is ordered closed.

August 9, 2013.

PSLRB Translation

Linda Gobeil,
Vice-Chairperson