

Files: 166-2-28814
166-2-28888
166-2-28889
166-2-29065
166-2-29066



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

BRENDA MARIE JOHNSON-PAQUETTE

Grievor

and

**TREASURY BOARD
(Human Resources Development Canada)**

Employer

Before: [Yvon Tarte, Chairperson](#)

For the Grievor: [Macey Schwartz, Counsel](#)

For the Employer: [Keith Willis and Georges Hupé](#)

Decided without an oral hearing.

DECISION

This decision deals with this issue whether the Board should exercise its discretion, pursuant to subsection 84(1) of the *PSSRB Regulations and Rules of Procedure, 1993*, to dismiss, for lack of jurisdiction, the following five grievances, that Mrs. Johnson-Paquette has referred to adjudication:

- the first grievance relates to a written reprimand that Mrs. Johnson-Paquette's supervisor gave her on June 22, 1998 (Board File No. 166-2-28814);
- the second grievance contests a letter, setting out terms and conditions of employment, that Mrs. Johnson-Paquette's supervisor gave her on June 22, 1998 (Board File No. 166-2-28889);
- the third grievance objects to Mrs. Johnson-Paquette's supervisor having been the employer's representative who signed, on September 23, 1998, the first-level reply to both the first and second grievances above (Board File No. 166-2-28888);
- the fourth grievance is to the effect that, on October 27, 1998, Mrs. Johnson-Paquette received an invitation to attend a work-related social function to which was also invited a co-worker against whom she had filed a harassment complaint (Board File No. 166-2-29065); and
- the fifth grievance challenges the fact that the employer did not accept that Mrs. Johnson-Paquette had been the victim of harassment, despite that a Notice and Reimbursement Claim Form (Quebec's Commission de la santé et de la sécurité du travail) to that effect had been signed by an employer's representative on December 9, 1997 (Board File No. 166-2-29066).

Mrs. Johnson-Paquette has referred these grievances to adjudication, alleging that they fall within the Board's authority to deal with disciplinary actions resulting in a financial penalty. The employer is objecting to the Board hearing these grievances. Both the employer and Ms. Johnson-Paquette have asked the Board to render a decision on the basis of written submissions.

The Facts

By letter dated 6, 1999, counsel for Mrs. Johnson-Paquette wrote to the Board that, for the purpose of this decision, "...she admits generally the alleged facts as set out by the [employer] in [its] letter to the Board dated August 3, 1999." These facts read as follows:

...

Back in 1992, Mrs. Johnson-Paquette filed a harassment complaint against a male co-worker (Mr. Campbell). Her allegations were investigated and determined to be founded. Although Management was satisfied that it had taken the proper actions to address the situation, Mrs. Johnson-Paquette was of the opposite view and never seemed to be at ease about finding herself around Mr. Campbell.

On July 9, 1997, Mrs. Johnson-Paquette again filed harassment grievances against the same Mr. Campbell. Her allegations included the 1992 incident in addition to more recent incidents. Management got a consulting firm to investigate the matter and report back. In the meantime, Mr. Campbell in turn filed a harassment complaint against Mrs. Johnson-Paquette.

The January 12, 1998 investigation report concluded that not only were Mrs. Johnson-Paquette's allegations unfounded but that the allegations against her were indeed founded. As a result of the investigator's report, Mrs. Johnson-Paquette grievances were denied.

On April 4, 1998, Mrs. Johnson-Paquette wrote to the Deputy Minister complaining about 25 individuals that had given testimonies during the course of the investigation described above.

On June 22, 1998, Mr. Thomas Townsend, Director General, imposed on Mrs. Johnson-Paquette certain terms and conditions of employment as a result of the findings of the investigator. On the same day, Mr. Townsend gave Mrs. Johnson-Paquette a written reprimand for abuse of process as a result of the letter she had written to the DM on April 4, 1998.

On July 17, 1998, Mrs. Johnson-Paquette grieved Management's actions (written reprimand [first grievance] and conditions of employment letter [second grievance]). These grievances are the subject of the first two referrals to adjudication filed on January 19, 1999 (166-2-28814 & 166-2-28889).

On September 23, 1998, Mr. Townsend replied to the two grievances at the first level of the grievance process. On the same day, Mrs. Johnson-Paquette grieved the fact that it was Mr. Townsend that had replied to her grievances [third grievance]. This grievance is the subject of the third referral to adjudication filed on January 19, 1999 (166-2-28888).

Mrs. Johnson-Paquette referred the three grievances under s. 92(1)(a) of the Public Service Staff Relations Act. This section deals with the interpretation or application of a collective agreement. The PSSRB wrote to the grievor seeking clarification. Mrs. Johnson-Paquette responded by saying that her references should have been made under s. 92(1)(b) of the PSSRA, section dealing with disciplinary action resulting in suspension or financial penalty.

On February 19, 1999, my colleague Keith Willis wrote to the PSSRB arguing that the Board did not have jurisdiction to hear these grievances as none of the issues referred by the grievor directly, or by inference, satisfied the very clear requirements of s. 92(1)(b) of the Act.

Following receipt of Mr. Willis' letter, the PSSRB wrote to Mrs. Johnson-Paquette seeking her comments. On March 24, 1999, the Employer again wrote the Board arguing that Mrs. Johnson-Paquette had failed to provide the Board with new and convincing evidence as to why she felt her grievances met the requirements of the PSSRA in order to be referred to adjudication.

The Board had originally decided to have the parties make their jurisdictional arguments before the adjudicator appointed to hear these matters. However, as a result of a request by Mr. Macey Schwartz, counsel for the grievor, the Board agreed to have the parties argue the issue of jurisdiction through written submissions.

...

In its letter of August 3, 1999, the employer added the following, which has not been challenged by Mrs. Johnson-Paquette, with respect to her fourth and fifth grievances:

...

I will now address the other two grievances filed by Mrs. Johnson-Paquette and referred to adjudication on June 7, 1999 (166-2-29065 & 166-2-29066).

Although unclear, it would appear that in both grievances, Mrs. Johnson-Paquette is claiming that

Management violated the Treasury Board policy on harassment. Again, upon receipt of her referrals, the PSSRB wrote to Mrs. Johnson-Paquette mentioning that it was unclear from her submission what types of grievances she was referring to adjudication.

In this first of two grievances referred on June 7, 1999 Mrs. Johnson-Paquette is complaining about Management's actions to allow her and Mr. Campbell to be invited to the same social function to celebrate the Department's fifth anniversary [fourth grievance]....

The second grievance referred on June 7, 1999 also deals with an alleged violation by Management of the Treasury Board policy on harassment. The fact that a management representative signed a claim for benefits under the provincial workers compensation plan seems to have triggered this other grievance [fifth grievance]....

...

The parties also agreed that Mrs. Johnson-Paquette has been on sick leave without pay from February 4, 1998 to March 31, 1998.

In addition, Mrs. Johnson-Paquette is alleging that she has also been on sick leave with pay, from October 16, 1997 to February 3, 1998, and on sick leave without pay, from April 1, 1998 to June 19, 1998. Mrs. Johnson-Paquette has apparently returned to work on June 22, 1998.

Moreover, it is appropriate to mention here that, in relation to the fourth grievance, the record indicates that, on October 27, 1998, an invitation to attend the celebration for the fifth anniversary of Human Resources Development Canada had been extended to all current and former employees of the branch where Mrs. Johnson-Paquette was working.

It is equally appropriate to mention that, in relation to the fifth grievance, the record suggests that an employer's representative signed, on December 9, 1997, an Employer's Notice and Reimbursement Claim Form (Quebec's Commission de la santé et de la sécurité du travail) stating that Mrs. Johnson-Paquette had been the victim of harassment. The record also suggests that, despite this, the employer did not subsequently accept the validity of that statement.

Arguments of the Parties

As I have already mentioned, the employer is objecting to the Board hearing any of Mrs. Johnson-Paquette's five grievances. It is submitting that none may be referred to adjudication pursuant to subparagraphs 92(1)(b)(i) or 92(1)(c) of the Act, as they do not relate to a disciplinary action resulting in suspension or financial penalty.

On the other hand, Mrs. Johnson-Paquette's final position on the employer's objection is that being on sick leave without pay "...from February 4, 1998 to June 22, 1998...." constituted a financial penalty against her within the meaning of subparagraph 92(1)(b)(i) of the Act.

Both parties referred the Board to *Massip v. Canada (Treasury Board)* (Federal Court of Appeal, January 11, 1985, File No. A-183-84), (1985) 61 N.R. 114, [1985] F.C.J. No. 12 (Q.L.).

Reasons for Decision

The legislative provisions relevant to this decision are found at subsection 84(1) of the Regulations and subparagraph 92(1)(b)(i) of the Act. Subsection 84(1) of the Regulations states that

84. (1) ...the Board may dismiss a grievance on the ground that it is not a grievance that may be referred to adjudication pursuant to section 92 of the Act.

and subparagraph 92(1)(b)(i) of the Act provides that

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

...

(b) ...

(i) disciplinary action resulting in suspension or a financial penalty....

...

...

and the grievance has not been dealt with to the satisfaction of the employee, the employee may...refer the grievance to adjudication.

It is not disputed that Mrs. Johnson-Paquette has been on sick leave without pay, from February 4, 1998 to March 31, 1998. For the purpose of this decision, I do not need to determine whether she continued to be on sick leave without pay until her return to work on June 22, 1998.

Mrs. Johnson-Paquette is alleging that the employer's actions forced her to be placed on sick leave without pay, which, in turn, constituted a disciplinary action resulting in a financial penalty, which may be referred to adjudication. This argument needs to be considered on light of each of the five grievances at hand.

Mrs. Johnson-Paquette filed her first grievance against a letter of reprimand that her supervisor gave her on June 22, 1998, which was apparently Mrs. Johnson-Paquette's first day back to work after having been on sick leave. I understand that Mrs. Johnson-Paquette could have felt aggrieved by this letter and I accept that it was a disciplinary action. However, I cannot accept her argument that this was a disciplinary action resulting in a financial penalty as I fail to see how this letter could possibly have resulted in her being on sick leave without pay prior to the date she received it.

Mrs. Johnson-Paquette's second grievance contests a letter, setting out terms and conditions of employment, that her supervisor also gave her on June 22, 1998. I have not been persuaded that this letter was a disciplinary action resulting in a financial penalty as, as was the case for the first grievance, it has occurred once Mrs. Johnson-Paquette had returned to work and was no longer on sick leave without pay.

Mrs. Johnson-Paquette's third grievance is directed at her supervisor having been the employer's representative who signed, on September 23, 1998, the first-level reply to both her first and second grievances. Although Mrs. Johnson-Paquette's supervisor's involvement in the third grievance might have created an apprehension of bias, I cannot find that it amounted to a disciplinary action. Moreover, I cannot see how it could possibly have resulted in her being on a sick leave without pay that had begun almost eight months before.

The fourth grievance concerns an invitation to the Human Resources Development Canada fifth anniversary celebration. Mrs. Johnson-Paquette apparently

received this invitation on October 27, 1998, which was directed to all current and former employees of the branch in which Mrs. Johnson-Paquette was working. As a result, a co-worker against whom she had filed a harassment complaint was also invited. Once again, I cannot find that this constituted a disciplinary action and I see no relation between this invitation and Mrs. Johnson-Paquette's sick leave without pay, that had begun almost nine months before.

For these reasons, I find that, on the basis of the records before me and of the written arguments submitted by the parties, Mrs. Johnson-Paquette's first, second, third and fourth grievances do not fall within that category of grievances covered by subparagraph 92(1)(b)(i) of the Act and cannot be referred to adjudication. As the parties have jointly asked the Board to dispose of the issue of jurisdiction prior to sending these grievances to a hearing, I find it appropriate to exercise the Board's discretion pursuant to subsection 84(1) of the Regulations and dismiss these grievances for want of jurisdiction. I therefore order files No. 166-2-28814, 166-2-28889, 166-2-28888 and 166-2-29065 closed.

The fifth grievance challenges the fact that the employer did not accept that Mrs. Johnson-Paquette had been the victim of harassment, despite that a Notice and Reimbursement Claim Form (Quebec's Commission de la santé et de la sécurité du travail) to that effect had been signed by an employer's representative on December 9, 1997. Although these events predated Mrs. Johnson-Paquette's sick leave without pay, nothing in the record or in the arguments before me would justify a finding that the employer's conduct amounted to a disciplinary action resulting in a financial penalty. In these circumstances, I also consider it appropriate to exercise the Board's discretion pursuant to subsection 84(1) of the Regulations and I dismiss this grievance for want of jurisdiction. I therefore order file No. 166-2-29066 closed.

**Yvon Tarte,
Chairperson.**

OTTAWA, December 8, 1999.