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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CHARLOTTE RHÉAUME

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Before: Jean-Pierre Tessier, Board Member

For the Grievor: Herself

For the Employer: Guy Blouin, counsel

Heard at Montreal, Quebec,
September 18, 2000

DECISION

[1] In a grievance filed on February 2, 1998, Charlotte Rhéaume requested payment of her salary and benefits for the period April 1, 1991 to August 2, 1993. During that period, Ms. Rhéaume was employed at Revenue Canada. On November 1, 1999, Revenue Canada became the Canada Customs and Revenue Agency, Ms. Rhéaume's new employer [S.C. (1999), c. 17]. The employer raised two preliminary objections before the hearing. These were objections to jurisdiction pertaining to the fact that the matter had allegedly already been decided (*res judicata*) and is untimely.

[2] At the hearing, after having heard the evidence and the arguments of the parties on the objections to jurisdiction, I indicated that I was reserving judgment on these objections. The grievor thus presented her evidence on the merits and the employer responded.

The Evidence

[3] On November 27, 1990, Ms. Rhéaume was absent because of illness. The certificate from her physician indicated that she suffered from a severe state of anxiety and depression associated with specific circumstances and that this situation had been caused by harassment at work.

[4] At a meeting with employer representatives in early 1991, Ms. Rhéaume indicated that she could no longer continue working in such conditions and that she would prefer to go to a different workplace in a different department.

[5] On March 4, 1991, Ms. Rhéaume's physician indicated that she could return to work on April 1, 1991, but recommended she be reassigned elsewhere.

[6] In March and November 1991, the grievor informed the employer by letter that she was ready to work, but on the condition that she be transferred to another position (Exhibits E-5 and E-6).

[7] On December 16, 1991, Marc Milliard, Regional Manager, Human Resources Division, Montreal Region, Revenue Canada, replied to Ms. Rhéaume that she was still an employee and that her position remained vacant. However, in light of her earlier letters, he suggested she submit another request for a transfer and indicated that an attempt would be made to find her a position outside the department in keeping with her preferences (Exhibit E-8).

[8] Finally, in July 1993, Ms. Rhéaume was offered and accepted a position within the department but at a different workplace.

[9] The parties admitted that the facts in this case essentially correspond with those reported in item 32 of pages 24 to 26 in *Rhéaume* (Board files 166-2-21976 to 21979, 166-2-21151 to 21154, 166-2-22356).

[10] The only distinction that the grievor adduced in evidence pertained to the content of the January 1991 meeting with Mr. Milliard and Joanne Desjardins. Ms. Rhéaume pointed out that she had not received a firm job offer at that time and maintained that she could not remember having been explicit about the fact that she no longer wanted to work for the same department.

[11] On that point, the employer called Mr. Millard to testify. He filed minutes of the January 1991 meeting (Exhibit E-11) and confirmed what was written in the seventh paragraph, that is, that Ms. Rhéaume had replied (at that time) that it would be better for her to change departments.

[12] Furthermore, with respect to the period between 1991 and 1993, Ms. Rhéaume adduced evidence that the position that had eventually been offered to her in 1993 had existed since 1992. On that point she filed the organization chart for the Regional Office, Excise and GST Liaison (Montreal) of Revenue Canada (Exhibit F-7). The employer replied that this did not change anything, since this position was within the department and since the employer's representatives who had contacted Ms. Rhéaume in writing or had met with her had always been certain that she wanted to be transferred to another department.

[13] With respect to this, I must note that Mr. Milliard's testimony was quite credible and that it was based on a report written a few days after the January 1991 meeting. Furthermore, in her testimony, although she indicated she could no longer clearly remember having demanded at that meeting that she be transferred to another department, Ms. Rhéaume in no way refuted the proceedings and the documents clearly indicating that she no longer wanted to return to the same workplace.

[14] I was able to observe that relations between the employer and the grievor were not at their best at that time (1992) and this did not make Ms. Rhéaume's reassignment

any easier. However, given my conclusions concerning the employer's preliminary objections, I do not need to comment on the merits of this case.

Objection to Jurisdiction Raised by the Employer

[15] The employer maintained that Ms. Rhéaume had a number of opportunities to submit her claim and that her parallel applications to receive health insurance payments did not absolve her of her obligation to file a grievance to claim her salary in due time, and not several years after the events. In support of this assertion, the employer referred to Ms. Rhéaume's previous grievances.

[16] The employer did file in a bundle a grievance notice and the associated replies (Exhibit E-3). In this grievance dated January 22, 1992, Ms. Rhéaume stated that she had been without pay since April 1, 1991 and that the employer, through its inaction, was depriving her of income. She went on to say that her workplace was indicated as being the Seagram's outlet in Ville LaSalle. She indicated that this assertion was a systematic continuation of harassment.

[17] The employer also filed a letter dated December 6, 1991 in which Ms. Rhéaume noted that in January she would have no income whatsoever (Exhibit E-7).

[18] The employer filed a letter from Sun Life (Exhibit E-9) dated July 11, 1996 and addressed to Ms. Rhéaume, which reads in part as follows:

[Translation]

...

...In your case, Sun Life has admitted its responsibility until March 31, 1991. Your subsequent absence was caused by staff relations problems and the disability insurance plan was not designed to resolve this type of situation. Moreover, you yourself admitted in our conversation that you were not ill at that point and that you were fit to work.

...

[19] According to the employer, Ms. Rhéaume knew in 1991-92 and even in 1996 that she had no salary or insurance benefits. She had to claim her salary in due time and not wait until 1998. On that point, the employer referred to the provisions in clause

M-38.10 of the collective agreement, which provide that a grievance must be filed no later than the 25th day following the incident that gave rise to the grievance.

[20] The grievor responded to the employer's allegations by filing a letter from the National Joint Council of the Public Service of Canada dated December 15, 1997 (Exhibit F-3). In this letter, the Council was of the view that Sun Life's decision was justified and that, in the circumstances, Ms. Rhéaume could not be considered to be completely disabled as of April 1, 1991 and thus could not receive insurance benefits.

[21] The grievor maintained that it was not until that point that she was able to file a grievance to claim her salary from 1991 to 1993. She stated that her efforts to obtain disability insurance benefits, both with the insurer and the committee that administers disability insurance and pensions, as well as with the National Joint Council, prevented her from claiming her salary through the grievance process since she was trying to obtain disability insurance payments.

[22] The employer replied that Ms. Rhéaume was fully aware of the situation in 1991-92 and that, even in her various grievances (re harassment and discrimination), she referred to the loss of income as early as 1991. The employer referred in particular to the grievance of January 22, 1992 (Exhibit E-3), in which Ms. Rhéaume was asking for, among other things, [translation] "...an amount of money covering the total amount of lost salary and all the benefits associated with it, retroactively to April 1, 1991...".

Decision on Objection to Jurisdiction with Respect to the Matter Being Untimely

[23] According to Exhibit E-7, it seems obvious that the grievor had known since 1991 that she would have no income in January 1992. In her letter of December 6, 1991, she indicated that in January she would have no income whatsoever.

[24] The same held true in January 1992 (Exhibit E-3) when, in her grievance of January 22, 1992, Ms. Rhéaume asked for, among other things, [translation] "...an amount of money covering the total amount of lost salary and all the benefits associated with it, retroactively to April 1, 1991...".

[25] When the grievor received a letter from Sun Life rejecting compensation (Exhibit E-9) in 1996, this served as a reminder that she had no insurance benefits and no salary for the period from 1991 to 1993.

[26] In any event, all of the incidents pertaining to the payment of salary and the transfer request took place between 1991 and 1993. It was thus during that period that the incident that could have been the subject of a potential grievance took place. I cannot imagine why, on July 16, 1993 at the latest, at the time she obtained a position, Ms. Rhéaume did not file a grievance claiming compensation for the period when she had no salary if she believed she was so entitled.

[27] I cannot accept the grievor's argument that she waited for all of her avenues of recourse relating to disability insurance benefits to be exhausted in order to file a grievance claiming compensation. It is in the very essence of keeping good labour relations that matters be settled promptly and that grievances be filed within the specified time frames. The avenues of recourse with respect to the payment of disability benefits did not prevent Ms. Rhéaume in any way from filing grievances in due time claiming compensation, if she felt she was entitled to it. Furthermore, in another grievance in 1992 (Exhibit E-3), she claimed an amount of money to compensate for her lost wages. The use of various recourses in relation to an incident does not create an extension of the time frames and thus conferring the ability to file another one several years later in the event the first grievance is dismissed.

[28] For all of these reasons, I must find that the grievance is untimely, having been filed several years after the incident that gave rise to it (lack of compensation in 1992-93). This finding is sufficient to dispose of the grievance.

Comments

[29] For information purposes, I will deal with the second objection to jurisdiction relative to the principle of *res judicata*.

[30] In reading the wording of the 1992 grievance (Exhibit E-3), it seems that Ms. Rhéaume is asking for "...an amount of money covering..."; in other words, an amount of money in damages to compensate for the employer's inaction or delay in finding her another position. She maintained that the employer's inaction constituted

discipline. Later on, she indicated that the employer's actions were a systematic continuation of harassment.

[31] In reading *Rhéaume (supra)* (Exhibit E-1), I note that all of the grievances filed by Ms. Rhéaume in 1990, 1991 and 1992 referred essentially to discrimination and harassment. As *Rhéaume (supra)* concludes that there was no harassment, the compensation claimed in the form of an amount of money covering the period from April 1991 to January 22, 1992 could not be granted.

[32] It seems to me that the grievance of January 22, 1992 had been dealt with from the standpoint of harassment whereby the employer, out of bad faith or vengeance, was also alleged to be in no hurry to find Ms. Rhéaume another position, thus giving rise to the claim for an amount of money to cover the lost salary. The grievance before me raises another question, that of an obligation for compensation during a period of employment.

[33] As previously indicated, I nonetheless allow the first objection to jurisdiction with respect to the matter being untimely.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, November 27, 2000.

Certified true translation

Maryse Bernier