

Public Service Staff  
Relations Act



Before the Public Service  
Staff Relations Board

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BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**

Applicant

and

**TREASURY BOARD**

Respondent

**RE:** Application under section 21 of the  
*Public Service Staff Relations Act*

***Before:*** Yvon Tarte, Chairperson

***For the Applicant:*** J.C. Plamondon, Public Service Alliance of Canada

***For the Respondent:*** Michel LeFrançois, counsel

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Heard at Ottawa,  
May 21, 1999

## DECISION

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On April 28, 1999, the Public Service Staff Relations Board (PSSRB) received a complaint signed by 59 employees of the Correctional Service of Canada posted at Donnacona Institution in Quebec.

According to its wording, this complaint pertains to disciplinary actions based on an alleged violation of paragraph 102(1)(c) of the *Public Service Staff Relations Act (PSSRA)*, which prohibits all employees who hold designated positions to participate in a strike. The complainants were asking that the disciplinary actions (financial penalties of \$1,000) be declared null and void because they violate sections 105 and 107 of the *PSSRA*. Subsection 105(1) provides that an employee who contravenes section 102 is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars. Then, section 107 provides that no prosecution for an offence under section 105 shall be instituted except with the consent of the PSSRB. Given the urgency of the situation, the PSSRB scheduled these cases for hearing for August 24 to 27, 1999 in Quebec City.

On May 11, 1999, the Public Service Alliance of Canada (PSAC), the bargaining agent for the aforementioned complainants, filed an application under section 21 of the *PSSRA* asking the PSSRB to make an interim order requiring the employer to immediately stop all disciplinary actions. This decision pertains to this application for an interim order. Due to its the nature, the application was scheduled expeditiously.

At the outset of the hearing, the parties agreed that this decision would be rendered based on the documentary evidence on file.

Oral argumentsFor the Applicant

In this case, the employer decided that, in its view, some employees had violated paragraph 102(1)(c) of the *PSSRA*. Further to this unilateral determination, the employer gave \$1,000 fines, in violation of sections 105 and 107.

Under the provisions of the *PSSRA*, specifically sections 102 to 107, the authority to declare that a violation of the Act has taken place and to impose fines does not lie with the employer but with a criminal court. In addition, such criminal proceedings cannot take place without the Board's consent.

The *PSSRA* gives the PSSRB the right to supervise all strike-related proceedings. Thus, it is unthinkable that, notwithstanding sections 102 to 107 of the *PSSRA*, the employer could, in the circumstances of this case, take justice into its own hands by taking severe action directly against its employees. Only the PSSRB can determine whether an unlawful strike has taken place. The Board has always jealously guarded the authority conferred on it by Parliament (see Board file 148-2-195 concerning PSAC and the Treasury Board).

In the instant case, the Board will need to determine whether the facts show a work stoppage and whether, if applicable, a 15-minute work stoppage is considered a strike. In addition, the Board will need to examine the legality of the designations of some employees.

The applicant advanced the argument that the procedures established under the *Canada Labour Code* be followed here, even though the wording of the Code is different from the *PSSRA*.

Accordingly, the applicant has asked that the Board make a general ruling preventing the employer from collecting the fines imposed until PSAC's complaint is heard on the merits in August 1999 in Quebec City.

For the Respondent

The respondent's argument was in two parts.

First, in its view, the Board does not have the authority to make an interim order as requested by the applicant because the *PSSRA* contains more specific provisions to deal with such matters. Amongst others, the employer was referring to sections 91 and 92 of the Act, which provide that an employee who feels aggrieved may present a grievance and refer it to adjudication. In support of this contention, the respondent referred to *Clennet* (Board file 148-2-24; [1980] 2 F.C. 295).

In addition, as previously done by the Canada Labour Relations Board (as it was formerly known) in *Grundy and B.C. Tel and The Telecommunications Workers Union*, 47 di 28, 82 C.L.L.C. 16,149, [1982] 1 Can L.R.B.R 326, the Board must ask itself seriously whether it is authorized to make such an "anticipated" or interim ruling without first having dealt with the merits. In *Reid et al*, 90 di 58, the Canada Labour Relations Board again expressed doubts with respect to its authority to make an interim order. The respondent also referred to *Brotherhood of Maintenance of Way Employees - Canadian Pacific System Federation v. Canadian Pacific Ltd.*, [1996] 2 S.C.R. 495.

The *Financial Administration Act*, R.S.C. 1985, ch. F-11, provides Treasury Board with the authority to establish disciplinary standards in the federal Public Service and determine penalties that may be applied for misconduct. The applicant asked that the Board make an interim order to prevent the exercise of a right under another statute.

The letters provided to employees in this case clearly state that the employer took disciplinary action against them. Sections 91 to 97 of the *PSSRA* set out the procedures to be followed for disciplinary matters. Employees who wish to contest the disciplinary actions against them must do so through the grievance process.

Second, if the Board were to decide it held the necessary authority to make an interim ruling, before doing so, it would have to determine whether the applicant had a

reasonable chance of success on the merits and consider the harm that could be caused to the parties if the order were made (George W. Adams, *Canadian Labour Law*, Second Edition, Canada Law Book, pages 10-120 to 10-122.1 and Jeffrey Sack, C. Michael Mitchell and Sandy Price, *Ontario Labour Relations Board Law and Practice*, Third Edition, Volume 1, Butterworths, page 1.105). Since the applicant failed to prove a *prima facie* case, an interim order cannot be made.

#### Reasons for decision

Under section 21 of the *PSSRA*, "The Board shall administer this Act and exercise such powers and perform such duties as are conferred or imposed on it by, or as may be incidental to the attainment of the objects of, this Act...". In fulfilling its mandate, the PSSRB must hold the necessary tools to ensure that the staff relations system set out in the *PSSRA* is administered in an effective and timely manner. The broad scope of the provisions contained in section 21 indicates to me that the legislator intended to give the Board the necessary authority to deal with the various situations that may arise in carrying out its mandate. Accordingly, I conclude that the Board has the authority, in the appropriate circumstances, to make an interim order.

Such an order cannot, however, be rendered without a serious review of the case to determine whether the applicant has a reasonable chance of success. In addition, before making an interim order, the Board must ensure that its decision does not cause more harm than good to the parties. Thus, financial harm is not sufficient in itself to warrant an interim order.

Having said the foregoing, the Board could not make the order requested in the cases at issue to preclude the respondent from exercising the right conferred upon it by the *Financial Administration Act* with regard to disciplinary matters. The employer is able to take strong action against an employee in situations of misconduct, either real or alleged.

Any employee subject to a disciplinary action can file a grievance. In addition, grievances that pertain to disciplinary actions resulting in either a suspension, financial penalty or termination of employment may, under section 92 of the *PSSRA*, be referred to adjudication before the Board. Therefore, the complainants who feel

aggrieved by the disciplinary actions taken by the employer can contest them through the grievance process.

I was not convinced by the applicant that irreparable harm would be caused to the complainants if I did not make an interim order in this case. Accordingly, the application is dismissed.

**Yvon Tarte,  
Chairperson**

OTTAWA, June 29, 1999.

Certified true translation

Serge Lareau