



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

ANDREW REEKIE

Complainant

and

KEN THOMSON

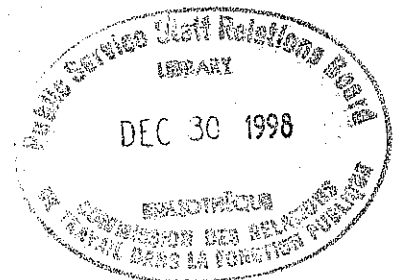
Respondent

RE: Complaint under section 23 of the  
Public Service Staff Relations Act

**Before:** J. Barry Turner, Board Member

**For the Complainant:** Himself

**For the Respondent:** Harvey Newman, Counsel



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Heard at Winnipeg, Manitoba,  
December 2, 1998



## DECISION

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Mr. Andrew Reekie, a Correctional Officer, CO-2 classification level, Correctional Service of Canada (CSC), Stoney Mountain Institution, Manitoba, has submitted a complaint dated November 6, 1997 under section 23 of the *Public Service Staff Relations Act* (PSSRA) and is a member of the Public Service Alliance of Canada (PSAC). Mr. Reekie is a second Vice-President of the Union of Solicitor General Employees (USGE), Local 50026, at Stoney Mountain. The complaint reads:

*Application: The Applicant [Complainant] submits that the Respondent [Mr. Ken Thomson], an employer representative, did interfere with my Union representation at a disciplinary hearing held on 07 October 1997 contrary to provisions of Sections 8(1) and 9(1) of the Public Service Staff Relations Act.*

*Remedy: The Applicant request the Board to issue the following Orders:*

- (1) an Order prohibiting Mr. Thomson or any other representative of the employer from setting terms or otherwise interfering in or with the Union representation of an employee during any investigation or disciplinary process.*
- (2) an Order quashing the disciplinary action taken subsequent to and arising out of the disciplinary hearing held 07 October 1997 and requiring the employer to remove all reference to such disciplinary action from all files related to the Applicant.*
- (3) such other Orders as the Board may deem appropriate.*

*Statement: I was advised by Mr. Thomson, in writing, that I was required to attend at a disciplinary hearing 10:00 Hours 07 October 1997 and that I was allowed to bring a Union representative to the hearing.*

*At the hearing, Mr. Thomson insisted that my Union representative, Ms. G. Fabris, was only an observer and not allowed to speak on my behalf, thus effectively denying me Union representation.*

Section 8 of the PSSRA reads:

*8. (1) No person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall participate in or interfere with the formation or administration of an employee organization or the representation of employees by such an organization.*

...

Section 9 of the PSSRA reads:

*9. (1) Except in accordance with this Act or any regulation, collective agreement or arbitral award, no person who occupies a managerial or confidential position, whether or not the person acts on behalf of the employer, shall discriminate against an employee organization.*

*(2) Nothing in subsection (1) shall be construed to prevent a person who occupies a managerial or confidential position from receiving representations from, or holding discussions with, the representatives of any employee organization.*

Section 23 of the PSSRA reads:

*23. (1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed*

*(a) to observe any prohibition contained in section 8, 9 or 10;*

...

*(2) Where, under subsection (1), the Board determines that the employer, an employee organization or a person has failed in any manner described in that subsection, the Board may make an order directing the employer, employee organization or person to observe the prohibition, give effect to the provision or decision or comply with the regulation, as the case may be, or take such action as may be required in that behalf within such specified period as the Board may consider appropriate.*

*(3) An order under subsection (2) directed to a person shall*

(a) where that person has acted or purported to act on behalf of the employer, be directed as well

...

(ii) in any other case, to the Secretary of the Treasury Board; and

...

#### Employer's Argument on Jurisdiction

Mr. Newman argued outright that I do not have jurisdiction to hear this matter by referring me to two letters written by the employer addressed to the Public Service Staff Relations Board. One by Carole LaPointe, Employer Representation Officer, Treasury Board Secretariat, Ottawa, dated November 18, 1997 that reads:

*As requested in your November 7, 1997 letter, I am providing you with the Employer's response to the above mentioned complaint.*

*Following review of the facts surrounding this complaint, the Employer concludes that the employee was advised by management that he could bring a union representative at the discipline hearing, should he wish to do so. It was explained to the employee that since this constituted an investigation, the employee's union representative was there as an observer only. Subsequently, another meeting was held to award discipline to the same employee; his union representative was present at that meeting and was offered to comment or ask questions but he declined to do so.*

*The Employer therefore denies violation of provisions of Sections 8(1) and 9(1) of the Public Service Staff Relations Act.*

The second letter dated November 25, 1998 written by R. Munro, Representation\Consultation, Staff Relations Division, Treasury Board Secretariat, reads:

*I am writing at this time to give notice that the Employer's position on the above noted matter scheduled for December 1, 199[8] in Winnipeg, Manitoba will be that the provisions of sections 8(1) and 9(1) of the Act are intended as a protection to employee organisations and not individuals. Consequently, the applicant acting alone does not have standing in the above noted matter.*

*The Employer therefore requests that the matter be dismissed on the above noted ground.*

Mr. Newman argued that the applicable portions of the PSSRA, subsections 8(1) and 9(1), do not provide for a complaint to be filed by an employee, like Mr. Reekie, but only by an employee organization, such as Mr. Reekie's bargaining agent, the PSAC. He added these two subsections are a statutory protection for an employee organization from employer participation in or discrimination against such an organization. He argued the PSAC comes under the definition in the PSSRA, section 2, for an "employee organization", that reads:

*"employee organization" means any organization of employees the purposes of which include the regulation of relations between the employer and its employees for the purposes of this Act, and includes, unless the context otherwise requires, a council of employee organizations;*

He further argued that, even if the facts in the complaint before me are accurate, such a complaint is open only to the employee organization under subsections 8(1) and 9(1) and not to an employee. Since Mr. Reekie is not represented by the PSAC in this case, and does not represent the PSAC, Mr. Newman said I have no jurisdiction to hear this complaint and should therefore dismiss it outright.

I was advised that Mr. Reekie has grieved the imposition of a financial penalty that surrounds the events of the complaint before me. I advised the complainant that it is his right to refer his grievance to adjudication, and that such action would lead to a different hearing than the one I am presently seized with.

Mr. Newman referred me to *Evans* (Board file 166-2-25641) and *Johnson* (Board file 166-2-26107).

#### Complainant's Argument on Jurisdiction

Mr. Reekie argued that, under section 23 of the PSSRA, his complaint that a CSC manager, Mr. Ken Thomson, interfered with the investigation of Mr. Reekie's conduct and subsequent imposition of discipline should proceed before me since he believed his rights under section 23 were violated. He argued that proper bargaining agent

representation before this hearing is another matter. He said the fact that his bargaining agent was not allowed to represent him during an investigation was an interference with his rights under section 9 of the PSSRA and his right to file a complaint.

#### Rebuttal Argument for the Employer

Mr. Newman agreed that section 23 of the PSSRA does allow me to examine a complaint, but only from an employee organization with proper standing. Since the PSAC is not interested in seeking redress in the matter before me, the complaint should be dismissed for want of jurisdiction.

He agreed that subsection 8(2) of the PSSRA gives the right to persons to complain, but this section 23 complaint refers to subsection 8(1) of the PSSRA. Mr. Newman concluded that, without PSAC representation, Mr. Reekie's complaint is not within my jurisdiction to entertain.

#### Decision

A section 23 complaint under the PSSRA could refer to violations of sections 8, 9 and 10 of the PSSRA. Mr. Reekie's complaint alleges a breach of subsections 8(1) and 9(1) of the PSSRA. Subsections 8(1) and 9(1) refer to "employee organization", in this case the PSAC, as a properly defined employee organization under section 2 of the PSSRA. Since Mr. Reekie is not an official representative of the PSAC, nor was anyone before me at the hearing representing the PSAC with respect to the complaint, I cannot find that Mr. Reekie has standing to file his complaint under section 23 and, therefore, that I have jurisdiction to hear Mr. Reekie's complaint.

The statutory rights under subsections 8(1) and 9(1) were established by Parliament to protect employee organizations, such as the PSAC, and not individual employees, against employer interference or discrimination.

If a remedy exists for the complainant, it probably lies in clause M-33.03 of the Master Agreement between the Treasury Board and the PSAC. Clause M-33.03 reads:

*M-33.03 When an employee is required to attend a meeting, the purpose of which is to render a disciplinary decision concerning him or her, the employee is entitled to have, at his or her request, a representative of the Alliance attend the meeting. Where practicable, the employee shall receive a minimum of one day's notice of such a meeting.*

The proper forum to deal with such a complaint would likely be the grievance process.

For all these reasons, I do not have jurisdiction to hear Mr. Reekie's complaint because he had no standing to file such a complaint under section 23 of the PSSRA.

**J. Barry Turner,  
Board Member.**

OTTAWA, December 22, 1998.