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Parliamentary Employment and
Staff Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

ROBERT J. BEAUCHAMP

Complainant

and

ROBERT MARLEAU

Respondent

RE: Complaints under section 13 of the
Parliamentary Employment and Staff Relations Act

Before: [Joseph W. Potter, Vice-Chairperson](#)

For the Complainant: [Luc David, Public Service Alliance of Canada](#)

For the Respondent: [Charles V. Hofley, Counsel](#)

Heard at Ottawa, Ontario,
July 30 and 31, 2001

DECISION

[1] On June 23, 2000 the Public Service Alliance of Canada (PSAC) filed a complaint pursuant to Section 13 of the *Parliamentary Employment and Staff Relations Act* (PESRA). The complainant, Robert Beauchamp, an employee of the House of Commons and also the local Union President, "...complains that the employer and/or a person acting on behalf of the employer has violated Section 6(1) and 6(2)(c) of the [PESRA] by preventing him from exercising his duties of Local President".

[2] The employer replied to this complaint by way of letter dated August 14, 2000 and disagreed there was any violation of the PESRA.

[3] Another complaint under section 13 of the PESRA was filed by the PSAC on July 12, 2000 alleging a violation of Section 6(1) and 6(2)(c) of the Act and again this was in respect of the complainant, Mr. Beauchamp. As will be seen, the facts of this complaint were different, but the effect was the same in that the complainant said he was prevented... "from exercising his duties as Local President".

[4] By way of letter dated August 14, 2000 the employer disagreed there was any violation of the PESRA.

[5] Both parties agreed that the two complaints could be combined for evidentiary purposes and one decision dealing with both would be issued.

Background

[6] The genesis for the June 23 complaint was a two-day suspension Mr. Beauchamp received, to be served on May 30-31, 2000. The suspension was for unauthorized use of his cellular phone while driving a minibus. The letter of suspension (Exhibit G-2) states, in part: "...On these days, you are not to report to work and you will not be allowed on the Employer's premises".

[7] Mr. Beauchamp is employed with the Transportation Services Section of the House of Commons. He drives vehicles, such as buses, vans and rental vehicles. The buses are used to transport Members of Parliament, and other officials, from location to location on and around Parliament Hill.

[8] Mr. Beauchamp is also President of the Union local, and has been for the past 9 years.

[9] The Union has an office provided to them by the employer and is situated inside the Confederation Building. By virtue of the notice of suspension, Mr. Beauchamp asserts he was prevented from accessing the Union office, thereby interfering in his ability to properly represent his members.

[10] The employer states the disciplinary notice is standard practice and Mr. Beauchamp was subject to the same rules as anyone else. However, Mr. Beauchamp did, at no time request access to his Union office for the period of time he was under suspension. In addition, there are other shop stewards who could adequately represent the membership in the absence of Mr. Beauchamp.

[11] In so far as the July 12 complaint is concerned, Mr. Beauchamp has equipped himself with a cellular phone in order to keep in touch with ongoing Union activities. Due to certain perceived difficulties this created, the employer wrote to Mr. Beauchamp on October 25, 1999 and ordered him to stop using his cellular phone while driving a House of Commons vehicle.

[12] This restriction on the use of the cellular phone interferes in the representation of Union members, according to the complaint, by preventing him from doing his job as Local President.

[13] The employer states this restriction is applied for safety reasons, and is reasonable given the requirement to be able to provide a proper service, with class, dignity and decorum. Under no circumstances is it an attempt to interfere with the complainant's right to represent his members.

Evidence

[14] Mr. Beauchamp testified that up to 7:00 p.m. buses are equipped with a two-way radio and there is a central dispatch area that can relay messages to the drivers via this method. However, after 7:00 p.m. the drivers are provided with a cellular phone and if someone is waiting to be picked up, a call to the driver on his cellular phone will be made.

[15] In addition to the above noted equipment, Mr. Beauchamp carries a personal cellular phone, which he uses throughout the day to conduct business related to Union matters.

[16] The use of a personal cellular phone by Mr. Beauchamp has existed for some time. In June 1994, the employer and the complainant entered into a memorandum of settlement concerning the use of the cellular phone (Exhibit G-4). The document states, in part:

...

When Mr. Beauchamp receives a call on his cellular phone while he is driving a bus or truck, he agrees to advise the caller that he cannot engage in further conversation while he is driving and that he will return their call when he has stopped driving and when operational requirements permit. It is agreed that he may place outgoing calls while at work, however Mr. Beauchamp agrees that he will not place any outgoing calls on his cellular phone while he is driving a bus or truck. Mr. Beauchamp and his representatives agree that he will limit his use of the cellular phone while he is at work. For greater clarity, this will mean that he will restrict the duration of his cellular phone conversations to no more than [sic] three (3) minutes at a time. This includes both calls received by Mr. Beauchamp and calls which are placed by him. Mr. Beauchamp also agrees to minimize, and keep to a reasonable level, the total number of calls conducted each day he is at work. It is agreed and understood that Mr. Beauchamp will not let the use of his cellular phone interfere with operational requirements of the employer.

...

[17] Mr. Beauchamp stated he interpreted this to mean he could use his cellular phone while driving his bus if he kept the calls to no more than three (3) minutes, so he continued to conduct Union business over his cellular phone while driving his bus. This included situations where there were passengers on the bus.

[18] There is no difference, according to the complainant, in using a two-way radio, issued by the employer, and using a cellular phone in so far as safety is concerned. Mr. Beauchamp feels the employer cannot tell him to cease and desist using his cellular phone while, at the same time telling him he can communicate on a two-way radio. If the issues are safety related, either he can use both forms of communication or he should not be allowed to use either.

[19] Robert Ethier and Jean-Guy Samson both drive a bus on Parliament Hill and each explained that after 7:00 p.m. they are issued a cellular phone, which they use to receive information about individuals that require a ride. Each also stated they do not

use personal cellular phones during the day. Also at night there is considerably less traffic on Parliament Hill than there is during the day.

[20] Art St-Louis is the Director of Building Management and he testified he spoke to Mr. Beauchamp about the content of the 1994 memorandum of settlement when he became Director in 1999. He testified he told Mr. Beauchamp there was to be no cellular phone usage while the bus was moving. Mr. Beauchamp ignored the warning and continued to use the cellular phone.

[21] In an effort to alleviate the situation Mr. St-Louis offered to have voice mail available for Mr. Beauchamp's use on his land line phone in the Union office, paid for by the employer.

[22] Mr. Beauchamp continued to disregard Mr. St-Louis' request not to use his cellular phone while operating the bus, so a letter was sent to Mr. Beauchamp on October 25, 1999 (Exhibit G-8).

[23] The letter was a direct order to Mr. Beauchamp to stop using his cellular phone while in a House of Commons vehicle.

[24] Mr. Beauchamp continued using his cellular phone while driving the bus, and a letter of reprimand was issued to him on February 2, 2000 (Exhibit E-2). The letter indicates that, but for the fact Mr. Beauchamp assured the employer his use of the cellular phone would not continue, a suspension would have been issued.

[25] Continued use of the cellular phone by Mr. Beauchamp while driving the bus however, prompted the employer to impose a two-day suspension on him by way of a letter dated May 25, 2000 (Exhibit G-2).

[26] The letter states, in part:

...

Because of your clear choice to ignore the Employer's policy concerning the safety and comfort of clients in your charge, I have no choice but to impose a two-day suspension, which will be served on May 30 and 31, 2000. On these days, you are not to report to work and you will not be allowed on the Employer's premises.

...

[27] Mr. Beauchamp stated the letter prevented him from accessing his Union office and thereby prevented him from conducting Union business. However, he conceded, in cross-examination, that he never asked Mr. St-Louis, or anyone else, if he could enter the Union office during the suspension period. He also stated he did not try to access the office at all during the period of suspension.

Argument for the Union

[28] The employer has violated Section 6(1) of the *Parliamentary Employment and Staff Relations Act* (PESRA) which states:

No person who is employed in a managerial or confidential capacity, 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.

[29] The evidence indicated the employer issued a cellular phone to the drivers for work purposes after 7:00 p.m. and their usage did not cause any concern, nor was there any safety issue concerning their usage. The same should apply to the usage of Mr. Beauchamp's cellular phone prior to 7:00 p.m.

[30] Mr. Beauchamp has never denied using his cellular phone during the day while driving the bus, but he has never had any safety violations and he uses the phone to stay in constant contact with his membership.

[31] Management says the use of a cellular phone is a safety issue, but these concerns seem to apply to the use of a cellular phone for Union business only and not to the use of a cellular phone in the evening or the use of the two-way radio during the day.

[32] Safety is only a pretext, as the employer does not seem to be concerned with any other communication other than for Union business.

[33] The 1994 memorandum of settlement was being applied as interpreted by Mr. Beauchamp up to 1999, then the employer changed the interpretation.

[34] The letter of suspension clearly prevents Mr. Beauchamp from having access to his Union office and it is clear that this prevented him from conducting Union business.

Argument for the employer

[35] The issue here is whether the employer has breached Section 6(1) and Section 6(2)(c) of the PESRA. Section 6(2)(c) states:

...

(2) Subject to subsection (3) no person shall

...

(c) seek by intimidation, by threat of dismissal, or by any kind of threat, or by the imposition of a pecuniary or any other penalty or by any other means to compel any employee

(i) to become, refrain from becoming or cease to be, or, except as otherwise provided in a collective agreement, to continue to be, a member of an employee organization, or

(ii) to refrain from exercising any other right under this part.

[36] The employer originally entered into a settlement with Mr. Beauchamp concerning the use of the cellular phone. The settlement document is clear on its face, and states there is to be no use of the cellular phone while the bus is moving. Mr. Beauchamp continued to defy the agreement.

[37] The use of a personal cellular phone creates a safety issue, which is a legitimate employer concern. It is not appropriate for Mr. Beauchamp to decide whether it is acceptable to use a cellular phone or not. He has received clear and consistent warnings not to use his personal cellular phone while operating a vehicle at work.

[38] There is a risk in using a cellular phone while driving a vehicle. The employer accepts this risk at night, when there is very little traffic on Parliament Hill. However, it is a serious risk in the day and no one is allowed to use their cellular phone while driving a vehicle before 7:00 p.m.

[39] The House of Commons set up a Union office in the Confederation Building so the Union affairs could be conducted there. Since Mr. Beauchamp is being paid by the employer to drive a vehicle, this provision of a Union office and its equipment was seen as a reasonable compromise between having Mr. Beauchamp perform his normal duties of driving a vehicle and act as local Union President.

[40] Mr. Beauchamp could have continued to conduct Union business over his cellular phone while suspended. He did not need to access the Union office to conduct Union business.

[41] There is no anti-Union animus in the employer's actions.

[42] The membership continued to be represented, even in Mr. Beauchamp's absence. Other stewards were still available to respond to members concerns.

Decision

[43] With respect to the first complaint, filed June 23, 2000, there is no question Mr. Beauchamp was denied access to the Union office situated inside the Confederation Building. The letter of suspension (Exhibit G-2) states, in part: "...you will not be allowed on the Employer's premises".

[44] Mr. Beauchamp did not question this letter of suspension as he said it clearly prevented him from accessing his Union office and, thereby, conducting Union business.

[45] The question that must be answered is did the Employer's actions constitute a violation of Section 6(1) and Section 6(2)(c) of the PESRA.

[46] In so far as Section 6(1) of the PESRA is concerned, I must determine whether or not the Employer's action:

...

"...interfered with the... administration of an employee organization or the representation of employees by such an organization."

[47] To the extent that the administration of the employee organization was interfered with by preventing Mr. Beauchamp access to the Union office while under suspension, I concur that this is an obvious effect. However, there was no evidence to state that there was any business to conduct during these two days in question, nor was there any evidence to demonstrate that members of the Union were denied representation during the two-day period.

[48] In a similar vein, the bargaining agent bears the onus to show that there was a violation of Section 6(2)(c) of the PESRA, as alleged in the complaint, and I was not

made aware of any violation of this provision with respect to the complaint filed on June 23, 2000.

[49] With respect to the second complaint, dated July 12, 2000, the complainant alleged the employer has violated the above noted provision of the PESRA by preventing him from using his personal cellular phone during the day to conduct Union business.

[50] A similar situation arose in Board file 161-2-368 where, at page 45 of the decision, it states:

...

“The complainant, who is an employee and a union official, is faced with a dilemma. On the one hand, as an employee, she owes her best performance to her employer. She is paid a salary and benefits to perform her best. On the other hand, she has the right to paid or unpaid leave to participate in union activities. It is obvious that there are only a limited number of hours during the day which permit her to do her work and attend to her union responsibilities. It is therefore her responsibility to divide her time properly and ensure that she fulfills her obligations. In weighing her rights and obligations, she must, however, remember that her main obligation and her most important priority is to satisfy her employer and inform her employer of her absences and the reason for her absences. Hence, if she does not perform her duties properly she may be faced with losing her job. She must, therefore, ensure at all times that her non-work related activities do not affect her work performance and that her employer is well informed of her requests for leave for union-related matters.”

[51] The same is true here. Mr. Beauchamp’s first responsibility is to operate a vehicle, and it goes without saying this is to be done in as safe a manner as possible.

[52] The employer has determined that it is not safe to talk on a cellular phone and continue to operate a motor vehicle on Parliament Hill during the daytime hours. I was not provided with any evidence to suggest this was an inappropriate decision, and it was not contested that the employer had the right to make this decision.

[53] In reviewing the memorandum signed in June, 1994 I find the message the employer gave to be quite clear. The first sentence deals with incoming calls and states they will be dealt with by telling the caller Mr. Beauchamp will call them later.

The second sentence of the agreement states “It is agreed that he may place outgoing calls while at work, however Mr. Beauchamp agrees that he will not place any outgoing calls on his cellular phone while he is driving a bus or truck”.

[54] Mr. Beauchamp states he interpreted the memorandum to permit him the usage of a cellular phone by virtue of the sentences “for greater clarity, this will mean that he will restrict the duration of his cellular phone conversation to no more that [sic] three (3) minutes at a time. This includes both calls received by Mr. Beauchamp and calls which are placed by him”.

[55] In fact Mr. Beauchamp states his interpretation was the one under which he operated until Mr. St-Louis’ arrival in 1999, and he contends it should continue to be so.

[56] I have no reason to doubt Mr. Beauchamp’s testimony that his interpretation of the 1994 memorandum prevailed until the arrival of Mr. St-Louis. However, the evidence was clear that Mr. Beauchamp was put on notice, both verbally and in writing (see letter of October 25, 1999) not to use his cellular phone while operating a vehicle. He was clearly aware of the order, and he chose to ignore it.

[57] I can find nothing in the employer’s actions of denying Mr. Beauchamp usage of his cellular phone while operating a vehicle that would suggest this violated either Section 6(1) or Section 6(2)(c) of the PESRA.

[58] Certainly Mr. Beauchamp can avail himself of the collective agreement provisions allowing him work breaks, and he could use that time to conduct his union affairs if he so chooses. There may well be other collective agreement provisions allowing him to absent himself from work, upon receiving permission to do so, in the event his union expertise is needed. However, what has been made clear to him is that he stop using his cellular phone while driving a House of Commons vehicle. I see nothing wrong with this direct order, and I do not view it as violating provisions of the PESRA.

[59] In summary, with respect to the first complaint, in so far as Section 6(1) is concerned in preventing Mr. Beauchamp access to the Union office interfered in the administration of an employee organization, while I was not made aware of any negative effects on the administration of the employee organization, this complaint is

upheld and I so declare. In the circumstances I am not prepared to make any order. However I would suggest that if another suspension occurs (and hopefully it will not) the suspension letter be composed in such a way that it will not interfere with the administration of an employee organization. I find no violation of Section 6(2)(c).

[60] With respect to the second complaint I can find no evidence that Section 6(1) or 6(2)(c) of the PESRA was violated, and that complaint is dismissed.

**Joseph W. Potter,
Vice-Chairperson.**

OTTAWA, September 12, 2001