



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**DAVE GIROUX**

Complainant

and

**GUY SÉGUIN (Health Canada)**  
**AND**  
**JOHN WHITNEY AND NEVILLE VINCENT**  
**(Public Service Alliance of Canada)**

Respondents

**RE:** Complaints under Section 23 of the  
Public Service Staff Relations Act

**Before:** Rosemary Vondette Simpson, Board Member

**For the Complainant:** Himself

**For the Respondents:** Georges Hupé, Treasury Board, and  
Edith Bramwell, Public Service Alliance of Canada

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Heard at Ottawa, Ontario,  
August 20, 1998.

## DECISION

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At the outset of the hearing, the parties agreed to the following facts. The complainant, Dave Giroux, worked for Health and Welfare Canada as a term employee at the CR-2 level. A position as a records support clerk was advertised. The closing date of the competition was April 15, 1992. The complainant was one of 30 applicants. An eligibility list was issued on July 24, 1992. Mr. Giroux was not a successful candidate and filed an appeal. He was represented in this appeal by Neville Vincent of the Public Service Alliance of Canada. The appeal hearing of this matter was held on November 5, 1992. At the hearing, the Department advised that because of flaws in the competitive process, it was going to re-assess all the candidates, including Mr. Giroux whose term had expired, before any appointments would be made.

The re-assessment of all the candidates was completed by June 1993 and a new eligibility list was established. Mr. Giroux was still not placed on this subsequent eligibility list. When he filed a second appeal, Mr. Vincent again represented Mr. Giroux successfully at this appeal and the eligibility list was overturned. This was later followed by budget cuts and a major reorganization within the Department.

The Department decided to cancel the competition. On June 22, 1994, Mr. Vincent received a letter from the complainant expressing his appreciation and thanks for the representation Mr. Vincent had given him. No allegations against Guy Séguin of Health Canada were ever raised until this complaint, some five years after the expiration of the complainant's term.

In January 1997, Mr. Giroux filed two complaints under section 23 of the *Public Service Staff Relations Act (PSSRA)*. The first complaint (Board file 161-2-825) against Mr. Guy Séguin, of Health Canada, alleging a violation of subsection 8(2) of the *PSSRA*, reads as follows:

*Health Canada discriminated against me because I was in the union (PSAC) and let go for not passing a competition while other (SCABS) strike breakers - Monot Hunot and Bruce Valentine - were kept on though not passing the same competition.*

The second complaint (Board file 161-2-826) against Messrs. John Whitney and Neville Vincent, of the Public Service Alliance of Canada (PSAC), alleging a violation of subsection 10(2) of the *PSSRA*, reads as follows:

*The union misinformed me in my appeal process with Health Canada. I should have been told to put in a grievance in 1992 not just appeal. The union silenced me at the second Public Service hearing and mentioned "un-contradicted evidence" and lied to the Public Service Commission.*

The relevant provisions of the *PSSRA* read:

8.(2) *Subject to subsection (3), no person shall*

(a) *refuse to employ, to continue to employ, or otherwise discriminate against any person in regard to employment or to any term or condition of employment, because the person is a member of an employee organization or was or is exercising any right under this Act;*

(b) *impose any condition on an appointment or in a contract of employment, or propose the imposition of any condition on an appointment or in a contract of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Act; or*

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

10.(2) *No employee organization, or officer or representative of an employee organization, that is the bargaining agent for a bargaining unit shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the unit.*

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;*

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(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*

(i) *in the case of a separate employer, to the chief executive officer thereof, and*

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

(b) *where that person has acted or purported to act on behalf of an employee organization, be directed as well to the chief officer of that employee organization.*

A hearing was held on August 20, 1998. At the commencement of the hearing, the question of timeliness was raised as a preliminary matter.

I advised the parties that I would hear and determine the preliminary matter first. In a letter to the Public Service Staff Relations Board (PSSRB) dated January 27, 1997, Mr. Hupé raised this issue. The employer's representative objected to the long delay in bringing forward the complaint. Five years had elapsed without any reference to or complaint about the discrimination and intimidation alleged. Mr. Hupé argued that Mr. Giroux's complaint was an abuse of process in that his basic problem was that he had not received a position as an indeterminate employee after the expiration of his term contract. He had taken appeals to the Public Service Commission and his case was dealt with there. In fact, because of downsizing the Department did not proceed with staffing actions. Mr. Giroux ceased to be an employee at the end of his term in September 1992.

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Mr. Hupé put forward the position that Mr. Giroux was simply seeking to find another forum to grant him the remedy he was unable to obtain from the appeal process and was willing to put forward new and unfounded allegations in order to gain entry to this forum.

Mr. Guy Séguin is named as respondent in the complaint (Board file 161-2-825); however, he was never accused of any of this before 1997 (a time lapse of five years).

Even if Mr. Giroux was heard on the merits and he was successful, the Board could not give him the remedy he wants. He could not be placed in a position. He argued that the Board would be limited, at best, to a declaration that there had been a violation of the prohibitions under section 23 of the *PSSRA* and would issue an order against any further breach of the prohibitions.

Mr. Hupé took issue with Mr. Giroux's claim that he had raised the matter of harassment because the word was used in a document submitted in his appeal case in 1993. There was no mention of Mr. Séguin. Mr. Hupé argued that Mr. Giroux is raising new allegations in the hope that a third party will hear him out again and deal with the issues already raised in his appeal under the *Public Service Employment Act*. His proper remedy lay with the Public Service Commission and the appeal process and that avenue was followed.

In relation to the question of timeliness, Ms. Bramwell expressed concern that so many extremely serious allegations were being brought against officers of the bargaining agent three to five years after these officers dealt with the complainant. One officer, Mr. Whitney, is retired; the other, Mr. Vincent, not only represented him in his appeals, but represented him successfully. It was certainly not the bargaining agent's fault if the Department chose not to staff the position. Now he is accusing the bargaining agent of sabotaging him and conspiring against him. It is simply not credible that, if Mr. Giroux's sense of injustice is so strong (after two successful appeals on his behalf), he would wait five years after the event to complain. The complaint process was available to him all along and this information was readily available to him from the bargaining agent and even from the PSSRB who, when called, often advise people as to their right to submit a complaint under section 23 of the *PSSRA*.

Too much time has elapsed and this goes well beyond the norm of reasonableness. It is grossly unfair and prejudicial to the bargaining agent's officers, one of whom is retired, to have these issues raised after all this time. The officers in question dealt with many cases and it is grossly unfair, years after they represented Mr. Giroux, for him to come back and say: "I don't think you represented me properly." This kind of delay goes to the fundamental fairness of the process.

### Complainant's Submissions

Although invited to be specific, the complainant's submissions were to the effect that the Department tried to get rid of him. He stated that he was let go because of the Department's anti-union stance. Beyond stating that he believed the Department, by not renewing his term and not appointing him to a permanent position, was sending an anti-union message, he was unable to state the kind of evidence he would bring forward to support his position. He mentioned that he had consulted his Member of Parliament but that she "has been bombarded by the Department". The complainant stated that he felt Mr. Vincent should have advised him to grieve the non-renewal of his term position in 1992. The complainant gave no reason for the delay in submitting the complaint.

### Decision

These complaints should have been laid within a reasonable time period of the acts complained of. Allowing years to elapse before laying the complaints constitutes an unreasonable delay which places the respondents at a disadvantage in responding to them.

The *PSSRA* and the *P.S.S.R.B. Regulations and Rules of Procedure* do not specify a time limit in bringing such complaints. However, the complainant must establish that the delay is not unreasonable. The complainant, Mr. Giroux, put forward no explanation as to why these complaints were not brought sooner. There is no reason why through the exercise of due diligence he should not have been able to obtain information about the complaint process years ago.

Unlike the *Harrison* case (Board file 161-2-725), another complaint under section 23 of the *PSSRA* where the complainant argued that he was prevented by his alcoholism from filing a complaint earlier, Mr. Giroux offered no real explanation for the delay. In any case, Mr. Harrison's complaint was dismissed for undue delay even though less time had elapsed between the occurrence of the events alleged and the filing of the complaint than in Mr. Giroux's case.

Although some latitude must be allowed for the late filing of complaints in proper circumstances, this is not such a case.

Mr. Giroux's complaints are dismissed because of his undue delay in submitting them.

**Rosemary Vondette Simpson,  
Board Member**

OTTAWA, January 29, 1999.