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Files: 561-02-691, 692, 693, 696, and 697

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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

**MANON DUBORD, SYLVIE CROTEAU, LUCE GAGNON, CHRISTIAN GÉMUS, AND
SYLVIE CARDINAL**

Complainants

and

UNION OF SAFETY AND JUSTICE EMPLOYEES

Respondent

Indexed as

Dubord v. Union of Safety and Justice Employees

In the matter of complaints under section 190 of the *Federal Public Sector Labour Relations Act*

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Complainants: Themselves

For the Respondent: Wesney Duclervil, grievance officer,
Public Service Alliance of Canada

Heard at Montreal, Quebec,
August 8, 2018.
(FPSLREB Translation)

I. Introduction

[1] Manon Dubord, Sylvie Croteau, Luce Gagnon, Christian Gémus, and Sylvie Cardinal (“the complainants”) each filed a complaint against the Union of Solicitor General Employees, now the Union of Safety and Justice Employees (USJE or “the respondent”). The USJE is a component of the Public Service Alliance of Canada (PSAC).

[2] The complainants alleged that the respondent refused to refer to adjudication their grievances against their employer, the Correctional Service of Canada. Therefore, according to them, the respondent committed an unfair labour practice within the meaning of s. 185 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*).

[3] The respondent denied committing an unfair labour practice within the meaning of the *FPSLRA*. It stated that its decision to refuse to refer the grievances to adjudication was informed and founded.

[4] The Federal Public Sector Labour Relations and Employment Board convened a hearing on August 8, 2018, at 9:30 a.m. Only the respondent appeared. It submitted a motion arguing that the complaints should be dismissed as abandoned.

[5] The respondent’s motion is allowed for the reasons set out in the following paragraphs.

II. Legislative clarifications

[6] The complaints were filed in June 2014 with the Public Service Labour Relations Board (PSLRB).

[7] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) came into effect and created the Public Service Labour Relations and Employment Board, which replaced the Public Service Staffing Tribunal and the PSLRB and was responsible for processing complaints filed under the *Public Service Labour Relations Act*.

[8] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent and renamed the Public Service Labour Relations and Employment Board to the Federal Public Sector

Labour Relations and Employment Board (“the Board”), which therefore rendered this decision.

III. Background

A. Events before the hearing

[9] The hearing for the five cases was first scheduled for March 27 to 29, 2018. However, the Board postponed it due to unforeseen circumstances. Nevertheless, it asked the parties for their availability for a hearing in May, June, or July 2018.

[10] The parties did not reach consensus about the dates proposed for May, June, and July 2018. In the circumstances, the Board decided that the complaints would be scheduled according to its next dates of availability.

[11] On May 1, 2018, the respondent and each complainant received a notice that the hearing for the five cases had been scheduled for August 8 to 10, 2018, in Montreal, Quebec.

[12] On Friday, May 18, 2018, one complainant, Christian Gémus, emailed the following to the Board’s main address after its office had closed:

[Translation]

...

I am part of the Dubord and others group that filed a complaint with the Federal Public Sector Labour Relations and Employment Board. We were called to appear at the hearing scheduled for August 8 to 10, 2018. Since at the earlier appearance dates that were scheduled for March a pre-hearing video meeting was planned, we would like the videoconference meeting put back on the agenda so that we could ask questions and better understand the issues of the August meeting.

...

[13] The Registry Officer assigned to the files read the email on May 22, 2018, which was the first working day after the date on which it was sent. On May 25, 2018, she acknowledged receiving the email and then emailed the five complainants and the respondent, informing them that a pre-hearing conference would be held on July 6, 2018, at 10 a.m. She specified that it would be a telephone conference and not a

videoconference but that if necessary, a second conference, by video, could be scheduled later. She also asked the parties to inform the Board by June 8 as to whether they would be available for the July 6 pre-hearing conference.

[14] The respondent and two complainants, Sylvie Croteau and Sylvie Cardinal, responded that they were available for the telephone conference on July 6 at 10 a.m. However, Ms. Cardinal clarified that she would not participate in the hearing. One complainant, Manon Dubord, advised the Registry Officer that she would not participate in the telephone conference or the hearing but that the other complainants would represent her. Mr. Gémus did not respond to the Registry Officer's email.

[15] Thus, the Board scheduled the teleconference with the parties for July 6, 2018, at 10 a.m.

[16] On July 5, 2018, at 4:41 p.m., Ms. Cardinal emailed the Registry Officer assigned to the files, stating as follows:

[Translation]

...

Subject: RE: 561-02-691 to 693, 696 and 697 (Dubord et al.)

Hello,

For reasons beyond our control, we must cancel the telephone conference for July 6, '18!

Thank you!

[17] On the morning of July 6, 2018, the Registry Officer read Ms. Cardinal's email. She sent Ms. Cardinal the following reply at 7:55 a.m.:

[Translation]

...

Good morning Ms. Cardinal,

I cannot simply cancel the teleconference. The Board Member hearing these files will make the decision to cancel the teleconference. If you wish to submit a request to postpone the teleconference, I will ask the other party for its position and then take the request to the Board Member.

...

[18] The Registry Officer did not receive a request to postpone the teleconference.

[19] The pre-hearing conference began as scheduled, at 10 a.m. on July 6, 2018.

[20] The complainants did not appear for the teleconference, and it was adjourned.

[21] On the afternoon of July 6, 2018, the Board issued directions to the parties that emphasized the following:

[Translation]

...

The Board Member assigned to these files ... asked me to convey the following directions to you:

A pre-hearing telephone conference about the complaints made in files 561-02-691, 692, 693, 696, and 697 was scheduled for July 6, 2018.

The complainants were advised that this conference would be held but did not participate in it. On July 5 at 4:41 p.m., a complainant sent the following message to the Board: "For reasons beyond our control, we must cancel the telephone conference for July 6, '18!"

The hearing on these cases will take place from August 8 to 10, 2018. The teleconference was held in preparation for that hearing so that the proceedings would go smoothly. It is easier to hold a hearing when all the parties know what to expect, meaning when they know in advance the issues that will be raised, the witnesses that will be called to appear, and the documents that will be submitted.

On July 6, the pre-hearing conference could not be held due to the complainants' absence, but the Board advised the respondent, which was the party on the line, that directions would be forwarded to the parties so that the hearing could take place from August 8 to 10.

...

[22] In its directions, the Board recommended to the complainants that they choose a spokesperson to facilitate communications between them, the Board, and the other party and to reduce the difficulties of coordinating the proceedings in the context of these files. In addition, it noted that two complainants had already advised it that they

would not appear at the hearing but that the other complainants would represent them. The complainants were asked to provide the spokesperson's contact information to the Board and the other party by no later than July 11, 2018.

[23] In its directions, the Board also set a deadline for submitting the list of witnesses and for exchanging documents and case law. Each party had until July 18, 2018, to submit to the Board and the other party the list of witnesses it would call at the hearing. In their lists, the parties were to identify their witnesses as well as the subjects and durations of their testimonies. The Board also invited the complainants' spokesperson to send it and the other party the remedy the complainants sought by no later than July 18, 2018.

[24] Likewise, each party was to send the other parties copies of the documents it would submit at the hearing as well as its case law list no later than July 25, 2018.

[25] Finally, the directions issued on July 6, 2018, put forward the following:

[Translation]

...

Clarifications

In the event that one of the parties has questions about these directions or if additional directions are required before the hearing starts, the party can request a pre-hearing conference to be held before the hearing. The request for a pre-hearing conference may be submitted to the Registry.

[26] On July 11, 2018, a formal notice of the hearing was sent to the parties. It specified the hearing date, time, and location. It also informed them that if they failed to appear at the hearing, the Board could rule on the matter based on the evidence and the submissions made at the hearing.

[27] The complainants did not provide a spokesperson's contact information to the Board and the respondent by July 11, 2018.

[28] The complainants did not provide their list of witnesses to the Board and the respondent by July 18, 2018. Nor did they send the Board and the respondent their desired remedy.

[29] On July 18, 2018, the respondent provided the Board and the five complainants its list of witnesses and a brief summary of their anticipated testimonies.

[30] At 3:05 p.m. on August 7, 2018, Mr. Gémus emailed the following to the Board:

[Translation]

...

I will not be able to attend court as scheduled for 8-9- and 10 August, like the majority of my colleagues. The opposing party imposed those dates on us in the middle of the vacation period. We understand all too well the strategy behind the choice of date, which serves to divide our group.

...

[31] Right after that, at 3:07 p.m., the Registry Officer asked Mr. Gémus the following: “[Translation] Hello Mr. Gémus, Do you know who your representative will be during the hearing scheduled for August 8 to 10, 2018, in Montreal, QC?”

[32] At 8:51 a.m. on August 8, Mr. Gémus sent the following reply to the Registry Officer assigned to the files:

[Translation]

...

During my telephone conversation with Mr. Duclervil [the bargaining agent representative that the respondent assigned to the files], he stated quite clearly that in his view, we were not a group but individuals because, he said, one or more people allegedly did not respect the time limits of our grievance [sic] with respect to some levels. Then he asked us to choose a representative for our group. He also asked us to produce case law on a case similar to ours, to support our argument. The issue is simple enough; whether, during the relevant period, we were in contact with inmates with a maximum rating. Therefore, it is a matter of producing a list of inmates with a maximum rating during that period. I can tell you that during the past 10 months, we were in contact with one inmate with a maximum rating who had just been granted release. I also do not understand why we have no access to a lawyer from our union who could represent us in this matter. Here is my argument with respect to this matter.

[33] The hearing was scheduled for the same day, at 9:30 a.m. on August 8, 2018.

[34] Neither the Registry nor the Board received any communication from the complainants requesting that the hearing be postponed.

B. The hearing

[35] The hearing began as scheduled, at 9:30 a.m. on August 8, 2018. Only the respondent was present.

[36] The respondent had planned to present its position on the merits of the complaints. One of its witnesses, Denyse Saumur, whose name appeared on the list of witnesses, was present. The plan was for her to explain why the decision not to send the complainants' grievances to adjudication had been informed and founded.

[37] Nevertheless, at the start of the hearing, the respondent submitted a motion to dismiss the complaints as abandoned. It maintained that the Board should consider the complaints abandoned given the complainants' lack of interest in them.

[38] Wesley Duclervil, a grievance officer with the PSAC, testified on the respondent's behalf. He was not on the list of witnesses shared on July 18, 2018, yet when he observed that none of the five complainants was present at the hearing, he deemed it appropriate to describe his conversations with some of them over the preceding few days. He had communicated with them to find out whether they were open to an out-of-court settlement.

[39] First, he explained that he was responsible for representing the respondent in the five complaints filed by the complainants. He affirmed that on July 5, the day before the teleconference scheduled for July 6, he telephoned Manon Dubord, the complainant in the first complaint file (file 561-02-691) to find out whether she was open to the idea of an out-of-court settlement.

[40] According to Mr. Duclervil, Ms. Dubord replied in the affirmative. He then asked her whether she would agree to contact the other four complainants to ask them the same question.

[41] During the call, Mr. Duclervil also asked Ms. Dubord whether she planned to participate in the next day's teleconference. She reportedly replied that Mr. Gémus had planned to participate, on behalf of the five complainants.

[42] The next day, July 6, 2018, none of the complainants was present at the teleconference, and it was adjourned.

[43] In the afternoon of July 6, 2018, the Board issued the directions to the parties.

[44] Mr. Duclervil explained that after he received the directions, one of the complainants called him. He received the call on his cell phone as he was on leave that day. He no longer recalled who of three complainants, Sylvie Croteau, Sylvie Cardinal, or Luce Gagnon, had called him. However, he recalled that the complainant's spouse had wanted to take part in the phone call. Mr. Duclervil had agreed to speak with the complainant and her spouse at the same time.

[45] During that call, the complainant's spouse did not understand why the respondent was not offering the services of a union lawyer to represent the complainants. Mr. Duclervil explained to the complainant and her spouse that the complaints were against the union and not the complainants' employer, which was why the complainants had to handle their complaints against the union. According to Mr. Duclervil, the complainant and her spouse understood the meaning of his words.

[46] Mr. Duclervil clarified that during the call, he repeated to the complainant that the respondent was open to negotiating an out-of-court settlement. She replied that she was also interested in that idea. Mr. Duclervil then asked her to contact the other four complainants so that one of them could be designated to send a settlement proposal to the respondent before the hearing, on their behalf as a whole.

[47] Subsequently, Mr. Duclervil received a call at work from Mr. Gémus, who confirmed that the five complainants were interested in an out-of-court settlement. Mr. Duclervil then invited Mr. Gémus to send him either a settlement proposal or the complainants' demands before the hearing.

[48] Mr. Duclervil also recalled recommending to Mr. Gémus that simultaneously, he comply with the Board's directions issued on July 6, 2018, after which Mr. Gémus reportedly told Mr. Duclervil that in his view, Ms. Dubord was in the best position to represent the group of complainants.

[49] Subsequently, Mr. Duclervil emailed his supervisor, Stan Stapleton of the USJE, requesting a mandate to negotiate the files.

[50] However, Mr. Duclervil never received a settlement proposal from the complainants. Therefore, he took no additional steps to confirm his mandate to negotiate the files.

[51] Finally, Mr. Duclervil added that on the day before the hearing, he tried unsuccessfully to reach Ms. Dubord and Mr. Gémus by telephone.

[52] Mr. Duclervil also received Mr. Gémus's emails of August 7 and 8, in which Mr. Gémus informed those interested that he would not attend the hearing scheduled for the following day, and neither would the majority of his colleagues. Still, this hinted at the possibility that one or two complainants would attend. Finally, the email also contained Mr. Gémus's argument with respect to his complaint.

IV. Reasons

[53] Section 17(3) of the *Federal Public Sector Labour Relations Regulations* provides as follows: "If a person who is provided with notice of a hearing fails to attend the hearing ... the Board may proceed with the hearing and dispose of the matter without further notice to that person."

[54] When a party fails to appear at a hearing and the Board is satisfied that the hearing notice was sent to that party, it may proceed to hear the complaint without further notice.

[55] In this case, I am satisfied that the complainants received an appropriate notice of the hearing date, time, and location. The July 11, 2018, hearing notice also informed the parties of the consequences of failing to attend the hearing.

[56] The hearing took place despite the complainants failing to attend, and I heard the respondent's motion asking that the complaints be dismissed as abandoned.

[57] The respondent did not have existing Board decisions on the subject in hand to support its motion to dismiss the complaints as abandoned, as instead it had planned to present its position on the merits of the complaints.

[58] Nevertheless, I note that there are a number of existing decisions on the subject, including *Patwell v. Deputy Minister of Employment and Social Development*, 2018 FPSLREB 37; *Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*, 2011 PSLRB

143; and *Smid v. Deputy Head (Courts Administration Service)*, 2014 PSLRB 24.

[59] In *Patwell*, although the Board made several fruitless attempts to contact the complainant between August 9 and December 19, 2017, he did not respond or acknowledge receipt of the communications. He also failed to attend the pre-hearing conference held on August 16, 2017, and the hearing held on January 19, 2018.

[60] Consequently, in that case, I found that the complainant showed all the characteristics of abandoning his case. His lack of communication with the Registry, the Board, and the respondent and his failure to inform the Board of any changes to his contact information were sufficient to indicate that he had abandoned his complaint. The public interest and the effective administration of justice also weighed in favour of concluding that the complaint had been abandoned.

[61] In *Tshibangu*, the PSLRB stated that a party's lack of communication shows a lack of interest in its case. And in *Smid*, the PSLRB deemed that a party must take reasonable steps to keep informed of the proceeding it started and to advise the Board of any changes to its contact information.

[62] In this case, the complainants did not appear at the July 6, 2018, teleconference, did not comply with the Board's directions issued on July 6, 2018, and did not appear at the August 8, 2018, hearing. At no time did they ask for an update on the proceedings.

[63] The complainants thus showed a clear lack of interest in advancing their cases. In particular, by failing to attend the pre-hearing conference in anticipation of the hearing and the hearing itself, they showed a lack of interest in the issues raised in their complaints.

[64] The Board also made sufficient attempts to offer the complainants a chance to be heard.

[65] I note that Mr. Gémus took some steps to inform the Board of his position with respect to his complaint. Specifically, he made the following argument in his email sent the morning of the hearing:

[Translation]

...

... The issue is simple enough; whether, during the relevant period, we were in contact with inmates with a maximum rating. Therefore, it is a matter of producing a list of inmates with a maximum rating during that period. I can tell you that during the past 10 months, we were in contact with one inmate with a maximum rating who had just been granted release. I also do not understand why we have no access to a lawyer from our union who could represent us in this matter. Here is my argument with respect to this matter.

...

[66] Yet, it appears that Mr. Gémus did not understand that his complaint was against the respondent and not his employer. Since he did not attend the pre-hearing conference in anticipation of the hearing, the Board did not have the chance to explain that to him.

[67] It is important to understand that the complainants allege that the respondent refused to refer their grievances against their employer to adjudication. They had the burden of proving that an unfair labour practice occurred within the meaning of the *FPSLRA*, but they chose not to meet it.

[68] Parties have the right to a timely hearing, without undue delay, despite one party's lack of interest in presenting its case.

[69] In this case, I find that the complainants have shown, as in *Patwell*, all the characteristics of having abandoned their cases. Their lack of interest, as shown during the events preceding the hearing, and their failure to appear at the pre-hearing conference and the hearing, are sufficient to show that they have abandoned their complaints. The public interest and the effective administration of justice also weigh in favour of considering the complaints abandoned.

[70] For these reasons, I find that the complainants have abandoned their complaints.

[71] In conclusion, I wish to inform the complainants that the people involved in these files, who travelled to Montreal for the hearing, used their time and resources. If the complainants had no intention of pursuing their complaints, they should have so advised the Board in a clear and timely manner. Their actions show a lack of consideration towards the Board and the respondent.

[72] In light of all this, I allow the respondent's motion and dismiss the complaints as abandoned.

[73] For all of the above reasons, the Board makes the following order:

(The Order appears on the following page)

IV. Order

[74] The complaints are dismissed.

December 11, 2018.

FPSLREB Translation

**Nathalie Daigle,
a panel of the Federal Public Sector
Labour Relations and Employment Board**