

No. 184

AUG 15 1985

File: 125-2-36

PUBLIC SERVICE STAFF RELATIONS ACT
BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

Robert Fradenburgh

Complainant,

AND:

D.A. Lane and Canadian Air
Traffic Control Association

Respondents.

RE: Application for Review under Section 25
of the Public Service Staff Relations Act

BEFORE: Michael Bendel, Deputy Chairman.

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Decided without a hearing. AUG 12, 1985

ADHERING TO GRIEVANCE
TIME LIMITS

DECISION

1. In a letter dated April 15, 1985, Mr. Robert Fradenburgh requested a review of the Board's decision of April 3, 1985 (Board Files: 161-2-322 and 323), in which it dismissed complaints by Mr. Fradenburgh against Mr. D.A. Lane and the Canadian Air Traffic Control Association. Mr. Fradenburgh's letter questioned the dismissal of the complaint against Mr. Lane, but not the one against the Canadian Air Traffic Control Association.

2. The complaint against Mr. Lane related to his alleged failure to respond to two grievances by Mr. Fradenburgh within the time limits specified under the PSSRB Regulations and Rules of Procedure (hereinafter referred to as the "Regulations"). The Board dismissed the complaint, pursuant to section 10 of the Regulations, without a hearing on the merits after holding a preliminary hearing. The principal reason the Board decided not to hold a hearing on the merits was that, even if Mr. Fradenburgh had been able to establish a violation of the Regulations on the part of Mr. Lane, the violation would have been a minor one, which had since been corrected, and inasmuch as no prejudice had been suffered by Mr. Fradenburgh, no valid purpose would have been served by inquiring into the complaint.

3. Although not formulated in precisely this way, the substance of Mr. Fradenburgh's criticisms of the Board's decision can be summarized as follows:

(a) That the Board is obliged by sections 18 and 20 of the Act to inquire into and to remedy all violations of the Regulations, even if minor, and that the Board did not comply with this obligation;

(b) That the Board is obliged under paragraph 22(c) of the Act to receive and accept evidence, and should not have dismissed the complaint without giving the complainant an opportunity to present his evidence;

(c) That the Board had indicated at the preliminary hearing that a further hearing would be held, yet failed to hold a further hearing;

(d) That the Board received documentary evidence from counsel for the respondent even though, contrary to the requirement contained in the Notice of Hearing, counsel for the respondent did not make a copy available to the complainant.

Mr. Fradenburgh's letter also asked for an interpretation by the Board of certain questions which, in his view, were raised in the complaint but not answered in the Board's decision.

4. Ms. Lois Lehmann, counsel for the respondent, filed written submissions in which she supported the decision of the Board and requested that the Board not modify the decision under review.

5. Mr. Fradenburgh's first ground of criticism, to the effect that the Board is obliged in every case to come to a definitive conclusion on whether the legislation has been violated, was anticipated in paragraph 18 of the decision under review, where the Board said this:

The Board wishes to emphasize that, in its view, its statutory powers in relation to complaints were designed to have a remedial focus. The primary concern of the Board must be to solve problems.

It is generally accepted by all labour relations boards that their role is to correct and rectify violations of the statute with a view to putting the successful complainant in the position he would have been in had there been no violation. It follows, as a general rule, that if a complainant has suffered no prejudice as a result of a violation, there is no basis for his complaint, and the Board should not inquire into the alleged violation. The Board acknowledged in the decision under review that there might have been a violation by the respondent in failing to respond to two grievances on time. However, Mr. Fradenburgh had long since received replies, and no prejudice had been suffered by him as a result of the short delay in replying. The Board therefore sees no reason for changing the conclusion at which it arrived in this respect in the decision under review.

6. Mr. Fradenburgh's second criticism was to the effect that the Board should have listened to all of

his evidence rather than dismissing the complaint without giving him an opportunity to present it. He alleges that, in so deciding, the Board violated paragraph 22(c) of the Act, which reads as follows:

The Board has, in relation to the hearing or determination of any proceeding before it, power...

(c) to receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it sees fit, whether admissible in a court of law or not and, without limiting the generality of the foregoing, the Board may refuse to accept any evidence that is not presented in the form and as of the time prescribed;

The Board would observe, firstly, that paragraph 22(c) empowers the Board to receive evidence, but does not oblige it to do so. Secondly, the Board would point out that, under section 10 of the Regulations, it has the power to dismiss an application on the ground that it does not, on its face, disclose grounds for a hearing. In the case of the complaint by Mr. Fradenburgh, the Board held a preliminary hearing, in accordance with paragraph 10(1)(b) of the Regulations, for the purpose of ascertaining whether any purpose would be served by holding a hearing on the merits of the complaint, and in the course of the preliminary hearing the complainant was given every opportunity to state precisely what he intended to prove if the Board decided to hold a hearing

on the merits. The procedure followed by the Board was therefore perfectly consistent with the Act and the Regulations.

7. The third criticism by Mr. Fradenburgh was that the Board had indicated at the preliminary hearing that a further hearing would be held, but failed to hold a further hearing. At the hearing held on February 14, 1985, the Board did not dispose of the respondent's request to dismiss the complaint without a hearing on the merits, pursuant to section 10 of the Regulations, because the Board was of the view that it needed the representations of the parties to the collective agreement on the proper interpretation of clause 5.17 thereof. When the Board stated that a further hearing would be held, the Board specified that it had in mind a hearing for the purpose of receiving the representations of the parties to the agreement on the meaning of clause 5.17, and this with a view to disposing of the respondent's request for the dismissal of the complaint. After the hearing, however, the Board concluded that even if it were to interpret clause 5.17 of the agreement in the manner most favorable to the complainant, a hearing on the merits would still not be warranted in view of the absence of prejudice suffered by him. The Board therefore does not accept that its failure to convene a second hearing was in any way improper.

8. The fourth criticism related to the receipt by the Board of a document from counsel for the respondent at the hearing without a copy being made available to the complainant. The document referred to was a previous

decision of the Board relied on by counsel for the respondent. To dispose of this criticism by Mr. Fradenburgh, it is sufficient to state that copies of precedents cited by counsel are not evidence and need not be made available to the other party to the proceedings or even to the Board, although it is desirable that they be made available.

9. In his request for a review, Mr. Fradenburgh asked the Board to respond to certain questions dealing with the nature of the obligation on the employer's representatives to respond to grievances and with remedies for breach of that obligation. The questions asked by Mr. Fradenburgh are all answered explicitly or implicitly in the decision under review, and the Board does not feel it is necessary or desirable to elaborate thereon in the context of this request for review.

10. In these circumstances, the request for review is dismissed.

"Michael Bendel"
For the Board

OTTAWA, August 12, 1985.