

APR 10 1988

File no.: 161-2-455

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

BETWEEN:

Raymond Tremblay,

complainant,

- and -

Gérard Veilleux, Victor Dupéré
and Larry Boulet,

respondents.

Before: Guy D'Avignon, Deputy Chairman.

For the complainant: C. MacLean, counsel

For the respondents: Michel Lecours, counsel.

Heard at Montreal, Quebec, January 27, 1988.

DECISION

This case concerns a complaint by Raymond Tremblay, pursuant to section 20 of Public Service Staff Relations Act. The complaint named Mr. Victor Dupéré, manager of the Control Centre, Transport Canada, in Montreal, Mr. Larry Boulet, shift supervisor, and Mr. G. Veilleux, Secretary of the Treasury Board, as respondents and alleged that the said respondents were in contravention of section 8 of the Public Service Staff Relations Act in not allowing the complainant to be acting supervisor in the North sub-unit at the Montreal Area Control Centre because he had submitted a grievance on October 17, 1986.

At the start of the hearing, counsel for the complainant asked that Mr. Larry Boulet be removed as a respondent and also stated that the remedy sought was not retroactive appointment but financial compensation for the loss of income. Accordingly, the complaint in relation to Mr. Larry Boulet is dismissed.

EVIDENCE

The complainant, an air traffic controller, employed by Transport Canada in Montreal, testified that at the end of November 1986 he was asked by the Unit Head, Yves Saulnier, if he would be interested in being acting supervisor for a given period of time. After discussing conditions, Raymond Tremblay indicated his willingness to take on the acting job at the AI-5 level and was told that he would start on January 15 until April 19, 1987. Two weeks later he learned that somebody

else would get the acting job. He saw Mr. Saulnier who appeared to be embarrassed and finally told him that Mr. Dupéré, the manager, decided that the complainant could not be appointed because he had submitted a grievance concerning break periods. The complainant then met with Mr. Boulet, the shift supervisor, who confirmed that Mr. Dupéré had said that he would not approve the appointment of Mr. Tremblay as acting supervisor because he had lodged a grievance.

Sometime in February 1987, the complainant saw Mr. Della Serra, the operations manager, who had been away from the job from 19 November to 3 December 1986. Mr. Della Serra confirmed that Mr. Dupéré was responsible for the decision not to appoint Mr. Tremblay. When the complainant finally managed to meet with Mr. Dupéré, on Dupéré's return from vacation, he was told that he had not been appointed because he had submitted the grievance.

During cross-examination, the complainant stated that in the past he had refused acting appointments.

Mr. Yves Saulnier and Mr. Larry Boulet corroborated the complainant's evidence.

Mr. Victor Dupéré, one of the respondents, testified that when he learned of the proposed appointment of Mr. Tremblay as acting supervisor, he did not approve of it. Mr. Tremblay had lodged a grievance on meal and relief breaks. He would have, as acting supervisor,

to make decisions on matters where he disagreed with the employer's policies. The witness admitted that he refused to appoint Mr. Tremblay because he had submitted the grievance. He also testified that the person who was appointed, Mrs. Renaud, also had lodged the same grievance but that at the time he was not aware of that fact.

Mr. Della Serra testified that he disapproved of Mr. Tremblay's proposed appointment because he had turned down similar requests twice before. He stated that he believed that Mr. Tremblay had the experience necessary for the appointment, but not the motivation.

ARGUMENTS

Counsel for the complainant argued that the action taken by Mr. Dupéré, in refusing to appoint him as acting supervisor, adversely affected Mr. Tremblay's career. This action was taken by Mr. Dupéré because the complainant had grieved. The action of Mr. Dupéré is a contravention of subsection 8(2) of the Public Service Staff Relations Act.

According to counsel, Mr. Dupéré stated that he did not agree with the appointment of the complainant because of the type of grievance which he had filed. However, the grievance had nothing to do with the authority of supervisors. Mr. Dupéré was not consistent: he refused to appoint Mr. Tremblay and then agreed to appoint Mrs. Renaud who had lodged the same grievance.

Mr. Dupéré breached the Act and Mr. Tremblay should receive acting pay from January 15 to April 15, 1987.

Counsel for the respondents argued that the complainant was not appointed acting supervisor not because he had grieved, but because of the nature of the grievance. He stated that Mrs. Renaud, who had also grieved, was appointed proving that the employer did not refuse to appoint Mr. Tremblay because he had grieved. Mr. Dupéré did not contravene section 8 of the Act and the complaint should be rejected.

REASONS FOR DECISION

No evidence was adduced concerning Mr. Gerard Veilleux. Therefore I dismiss the complaint against him.

As far as the complaint against Mr. Victor Dupéré is concerned, I find that he did contravene subsection 8(2) of the Public Service Staff Relations Act in that he refused to appoint the complainant to an acting position because he was exercising a right under the Act, i.e. lodging a grievance. This action caused a pecuniary loss to the complainant and I order that he be paid compensation equivalent to the difference between his regular salary and what he would have received if he had been appointed to the acting position at the AI-5 level from January 15 to April 19, 1987. In addition I direct Mr. Victor Dupéré to abide by the prohibitions contained in subsection 8(2) of the Act in future.

Pursuant to subsection 20(2) of the Act, I also direct my order to the Secretary of the Treasury Board.

For the Board,

Guy D'Avignon,
Deputy Chairman.

OTTAWA, November 4, 1988