

Form 16
(Section 57)

COMPLAINT UNDER SECTION 190 OF THE ACT

Public Service Labour Relations Act

NOTICE: (1) The original and one copy of this complaint must be filed with the Board.

(2) Information relating to the proceedings is subject to the Board's Policy on Openness and Privacy. In accordance with that policy, the Board conducts its hearings in public, except in exceptional circumstances. It also provides public access to case files and posts its decisions electronically on its website. The Board's Policy on Openness and Privacy is posted on the Board's website.

1. Complainant information:

Mr. Mrs. Miss Ms.

Last or family name (print in block letters): Canadian Merchant Service Guild (CSMG)

First name (print in block letters):

Mailing address:

Apartment (if applicable): _____ Number and street: 9 Antares Drive, Suite 234
City: Ottawa Province or Territory: Ontario Postal code: K2H8S6

Telephone numbers (where we can reach you):

Home: (_____) _____
Office: (613) 727-9531

Fax numbers (where we can reach you):

Home: (_____) _____
Office: (613) 727-6079

E-mail address: _____

Name of authorized representative (if applicable): David Jewitt

Mailing address (if different from above):

Apartment (if applicable): _____ Number and street: 2-1505 Carling Ave
City: Ottawa Province or Territory: Ontario Postal code: K1Z7L9

Telephone number: (613) 594-5100 Fax number: (613) 594-5156

E-mail address: david@jewittmcluckie.ca

2. Respondent information:

Name: Treasury Board of Canada

Mailing address:

Apartment (if applicable): _____ Number and street: L'Esplanade Laurier, West Tower, 5th floor, 300 Laurier Ave West
City: Ottawa Province or Territory: Ontario Postal code: K1A0R5

3. Paragraph of the *Public Service Labour Relations Act* on which the complaint is based:

- 190(1)(a) Failure to comply with section 56 (duty to observe terms and conditions).
- 190(1)(b) Failure to comply with section 106 (duty to bargain in good faith).
- 190(1)(c) Failure to comply with section 107 (duty to observe terms and conditions).
- 190(1)(d) Failure to comply with subsection 110(3) (duty to bargain in good faith).
- 190(1)(e) Failure to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award).
- 190(1)(f) Failure to comply with subsection 125(1) (duty to observe terms and conditions).
- 190(1)(g) Unfair labour practice within the meaning of section 185.

4. Concise statement of each act, omission or other matter complained of, including dates and names of persons involved:

See Schedule "A"

5. Date on which the complainant knew of the act, omission or other matter giving rise to the complaint:

27/05/2016
(dd/mm/yyyy)

Complete sections 6 and 7 only if the complaint alleges an unfair labour practice prohibited by paragraph 188(b) or (c) of the Public Service Labour Relations Act and if the employee organization has established a grievance or appeal procedure.

6. Date on which a grievance or appeal was presented in accordance with any procedure that has been established by the employee organization:

13/06/2016
(dd/mm/yyyy)

Where information on more than one person is required in a section or the space provided is not sufficient, please attach additional pages of same-sized paper.

7. Date on which the employee organization has provided the complainant with a copy of a decision with respect to the grievance or appeal referred to in section 6:

12/12/2017
(dd/mm/yyyy)

8. Steps that have been taken by or on behalf of the complainant for the resolution of the action, omission or other matter giving rise to the complaint:

~~See Schedule "A"~~

9. Corrective action sought under subsection 192(1) of the *Public Service Labour Relations Act*:

~~See Schedule "A"~~

10. Other matters relevant to the complaint:

~~See Schedule "A"~~

I, the undersigned, (duly authorized representative of the complainant), file this *Complaint under Section 190 of the Act*.

Date: 08/02/2018
(dd/mm/yyyy)

Amal Singh for David Jewitt

(signature of complainant or authorized representative)

(office held with the complainant, where applicable)

Schedule A

1. The Canadian Merchant Service Guild (hereinafter referred to as the "Guild") represents the Ships' Officers employed in the Federal Government. The majority of the Ships' Officers serve on vessels operated by the Canadian Coast Guard, a Special Operating Agency within the Department of Fisheries and Oceans. The Guild also represents the civilian Officers on Department of National Defence vessels and the Instructors and Cadets at the Coast Guard College.
2. Starting around February 2016, the Federal Government's new Phoenix pay system went "live" for Federal Government workers including Guild members.
3. As has been reported widely in the news media, the implementation of the new Phoenix pay system has been fraught with errors and mistakes, leading to widespread instances of employees being, underpaid, overpaid or not paid at all. For Guild Members in particular, the errors have largely resulted in underpayments as opposed to overpayments.
4. Guild members have been hit particularly hard by this new pay system as many of its members work under complicated and irregular scheduling systems which Phoenix has been unable to properly process. Adding to the problem is the fact that Ships' Officers who are away at sea for weeks often do not have regular access to the internet or other modes of communication and are therefore unable to access their own personal records and bills to confirm whether payroll deposits are made correctly.
5. Many Guild members have filed grievances with respect to the Employer's failure to pay the correct increment, acting pay or overtime pay and many of those grievances have been allowed as evidenced by the responses to the grievances of Shane Battiste and Louis Campbell. In addition to these two grievances, the Guild can provide many other examples.

See responses from the Department of Fisheries and Oceans to grievances of Shane Battiste and Louis Campbell

6. However, the Guild maintains that this is a completely "empty and hollow gesture" and that the Employer continues, notwithstanding its "acknowledgments", to continue to fundamentally breach its statutory and Collective Agreement obligations by refusing to pay amounts that were never in question in the first place. Furthermore, the Employer's actions continue to deny Guild members a real remedy for their legitimate grievances which never should have had to be filed in the first place if the Employer was honouring its obligations to pay in accordance with the rates and provisions set out in the Collective Agreement and which the Employer has known to be owing all along.
7. The Employer's "tactic" to accept that the grievance is legitimate or "allowed" and then engage in a deliberate and concerted refusal to pay the amount found to be outstanding under the Collective Agreement is a repudiation of the Employer's obligations to honour the terms of its Collective Agreement with the Guild and constitutes the most egregious of Unfair Labour Practices as it constitutes a complete repudiation of the provisions of the Act that create the mechanisms for resolving Labour Relations and Collective Agreement disputes in the first place. Further, it constitutes a repudiation of the

Employer's fundamental obligation to honour the commitments it makes when it enters into a Collective Agreement pursuant to the Act, including the Statutory Freeze provisions which preserve the terms of that Collective Agreement during the time following the expiry of the Collective Agreement.

8. The Employer has available to it numerous mechanisms by which it could make employees whole with respect to amounts owing under the Phoenix pay system but refuses to utilize those mechanisms. Instead, the Employer indicates that, as a remedy, it will "refer the matter to a pay advisor" knowing that the Phoenix system, will delay payment indefinitely notwithstanding the acknowledgement of the Department of Fisheries and the Guild that the grievance is legitimate, and the monetary claim requested is allowed and owing.
9. It is the Guild's position that the Employer is engaging in an Unfair Labour Practice by consistently not honouring the provisions of the Act and the Collective Agreement and is simply "in a smoke and mirrors way" going through the motions in the grievance procedure to effectively undermine and deny the Guild members a legally enforceable remedy when one of their most substantial and fundamental collective agreement terms are breached, namely appropriate pay for work performed.
10. It is the Guild's position that the Employer, by its failure to pay the correct amounts to which Guild members are legally entitled, compounded by its failure to pay those amounts in a timely manner, is in breach of all of its obligations under the *Federal Public Sector Labour Relations Act* ('the Act'), and specifically relies upon the Preamble and the sections outlined below.
11. The Guild alleges that the Employer's actions are in breach of the following provisions of the Act in addition to the fundamental statutory obligation to honour collective agreement commitments entered into pursuant to the Act:
 - 186(1)(a) Interference with the administration of an employee organization and representation of employees;
 - 186(2)(a) Discrimination against an employee with respect to pay and intimidation of an employee because he/she presented a grievance; and
 - 186(2)(c) Intimidation by the imposition of a financial or other penalty to compel a person to refrain from participating in a proceeding, filing a complaint or presenting a grievance.

The Employer's Breach of its Statutory Obligations

12. In addition to its obligations under sections 107 and 125 of the Act, the Guild submits that these Unfair Labour Practices referenced in the Act must be interpreted in a manner consistent with the legislative purposes of the Act which are set out in the Preamble and includes a number of obligations which the Employer is statutorily mandated to uphold, namely that:

The Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment;

...

Commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service;

13. The Guild further submits that the Employer is fully aware of the problems associated with the incorrect and delayed processing of payroll for its employees.
14. This issue is a significant issue for Guild members. Timely and accurate pay is fundamental to the employment relationship and is specifically negotiated and mandated pursuant to the provisions of the Guild's Collective Agreement with the Employer.
15. Virtually all of the Guild's members and their families rely upon timely and accurate processing of their pay.
16. The Employer's failure to live up to its Collective Agreement obligations and its contractual duty to provide timely and accurate pay is undermining the Guild's ability to represent its members, discriminates against those employees who have presented a grievance in an effort to obtain pay that is lawfully owed to them and the Employer's "cavalier" refusal to engage in any meaningful steps to ensure that the members receive pay following a grievance within a reasonable period of time after the filing of the grievance is a form of intimidation through the imposition of a financial penalty for those members who have sought redress through the grievance procedure and are participating in the Grievance procedures set out in the Act as the clear expectation is that the Employer will honour its commitments under the Act. Instead members are now frustrated and intimidated and suffering a significant financial penalty and hardship and the ability of the Guild to represent them to achieve an effective remedy is completely interfered with and undermined by the Employer's actions.
17. Members across the Country are protesting the continued lack of action and response by the Guild as their designated Bargaining Agent and are questioning the value and integrity of the Guild to whom they pay dues for representation in their disputes with their Employer.
18. The Guild submits that not only are the Employer's actions in breach of its obligations under the *Act* but are a flagrant repudiation of its statutory responsibilities that are undermining and interfering with the Guild's ability to represent its members.

Duty to observe terms and conditions – Breach of Statutory Freeze

19. Section 125(1) of the *Act* sets out the statutory freeze provisions prohibiting the Employer from unilaterally alter the terms and conditions of employment once notice to collectively bargain is given.
20. Notice to bargain was given by the Union in February 2014 for its Collective Agreement with the Employer expiring on March 14, 2014. The parties have been in Collective

Bargaining since then but were unable to reach an agreement and, on November 24, 2017, the Guild requested Arbitration to determine the final terms and conditions of employment for the bargaining unit.

21. The Guild submits that the Employer's failure to pay its employees correctly and in a timely manner is in violation of its obligations under sections 107 and 125 of the *Act*.

Remedy Requested

22. The Guild hereby requests the following orders:

- a. An Order directing the Employer to issue personal cheques, outside of the Phoenix system, for any monies owing or that will be owing as a result of Phoenix "errors" within 30 days of the Board's Award;
- b. An Order directing the Employer to include interest on the amounts owed in (a) above retroactive to the date the monies were wrongly not paid;
- c. An Order directing the Employer to include punitive damages on the amounts owed in (a) in the amount of \$5,000 per member affected by the Employer's breaches of the Act.
- d. An Order directing the Employer to establish a separate and discrete account at a Canadian chartered banking institution where members can cash their cheques without going through the Phoenix system; and
- e. Any other Order that may be requested and that the Board considers appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF FEBRUARY, 2018.