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**Citation:** 2009 PSLRB 28



*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

**MARK HALFACREE**

Complainant

and

**PUBLIC SERVICE ALLIANCE OF CANADA**

Respondent

Indexed as

*Halfacree v. Public Service Alliance of Canada*

In the matter of complaints made under section 190 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** [Renaud Paquet, Board Member](#)

***For the Complainant:*** [Himself](#)

***For the Respondent:*** [Jacquie de Aguayo, Public Service Alliance of Canada](#)

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Decided on the basis of written submissions  
filed May 20, September 15 and November 17, 2008, and February 25, 2009.

## REASONS FOR DECISION

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### **1. Complaints before the Board**

[1] Between April and August 2008, Mark Halfacree (“the complainant”) filed three complaints against his bargaining agent, the Public Service Alliance of Canada (“the respondent”). The complaints are related to the representation provided by the respondent for grievances that the complainant filed against his employer. The complaints refer to the following sections and paragraphs of the *Public Service Labour Relations Act* (“the Act”):

...

**190.** (1) *The Board must examine and inquire into any complaint made to it that*

...

(e) *the employer or an employee organization has failed to comply with section 117 (duty to implement provisions of the collective agreement) or 157 (duty to implement provisions of the arbitral award);*

...

(g) *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*

...

**185.** *In this Division, "unfair labour practice" means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*

...

**187.** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*

...

**117.** *Subject to the appropriation by or under the authority of Parliament of money that may be required by*

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*the employer, the parties must implement the provisions of a collective agreement*

*(a) within the period specified in the collective agreement for that purpose; or*

*(b) if no such period is specified in the collective agreement, within 90 days after the date it is signed or any longer period that the parties may agree to or that the Board, on application by either party, may set.*

...

*157. Subject to the appropriation by or under the authority of Parliament of any money that may be required by the employer, the parties must implement the provisions of the arbitral award within 90 days after the day on which the award becomes binding on them or within any longer period that the parties may agree to or that the Board, on application by either party, may set.*

...

#### **A. Complaint 561-02-227**

[2] The Board received this complaint on April 24, 2008. The complainant alleged that the respondent violated paragraph 190(1)(g) of the *Act*. On June 20, 2003, the complainant filed a grievance against his employer for an alleged failure to consult with, and to obtain mutual agreement from, the bargaining agent before implementing a variable shift schedule arrangement. The respondent referred the grievance to adjudication on behalf of several grievors. On January 21, 2008, a few days before the adjudication hearing, the respondent and the employer reached an agreement and settled the grievance. In the settlement, the employer agreed to rectify the situation and to pay each grievor a lump sum of \$1600. The complainant was not satisfied with that settlement, and he filed this complaint.

[3] On the complaint form, there are no details about the actions or omissions on which the complaint is based. However, as one of the corrective actions, the complainant requests that he be awarded damages for the respondent's failure to represent his grievance.

[4] In its submission of May 20, 2008, the respondent argued that the complaint should be dismissed without an oral hearing. First, the complainant has tendered no

evidence to establish a *prima facie* violation of the *Act*. Second, the respondent argued that the complaint is untimely because the complainant was fully aware of the circumstances giving rise to the complaint in August 2007.

[5] On June 2, 2008, the Board wrote to the complainant requesting that he inform the Board of his position vis-à-vis the respondent's submission of May 20, 2008 by no later than June 17, 2008. The complainant did not reply to the Board's request. The Board made several attempts to reach the complainant, and he did not reply. The complainant was granted an extension of time so that he could provide his position by July 29, 2008. Since then, the complainant has submitted additional documents to the Board related to his complaint, but he has never submitted a response to the respondent's submission of May 20, 2008.

**B. Complaint 561-02-345**

[6] The Board received this complaint on August 20, 2008. The complainant alleged that the respondent violated paragraphs 190(1)(e) and (g) of the *Act*. On December 14, 2005, the complainant filed a grievance against his employer about the application of a National Joint Council directive. On May 15, 2008, the respondent advised the complainant that it would not proceed to the final level of the grievance procedure with some of the issues raised in the grievance. The complainant was not satisfied with that decision, and he filed this complaint.

[7] On the complaint form, there are no details about the actions or omissions on which the complaint is based. In an appendix attached to the complaint form, the complainant specifies that the respondent failed to represent his full grievance, that it failed to observe and implement the collective agreement and the terms and conditions of employment, and that it committed an unfair labour practice. The complainant provided no details or facts to support those allegations. However, he provided, as an attachment to his complaint, a nine-page letter dated May 15, 2008, and signed by Elaine Massie, a service officer with one of the respondent's components. In that letter, Ms. Massie explained in detail why she would not pursue, at the final level of the grievance procedure, some of the issues that the complainant raised in his grievance.

[8] In its submission of September 15, 2008, the respondent argued that the complaint should be dismissed without an oral hearing. First, the complainant has

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failed to establish a *prima facie* violation of section 187 of the *Act*. Second, with respect to the matters raised by the complaint, paragraph 190(1)(e) does not apply as it deals with the implementation of collective agreements or arbitral awards, not contract administration.

[9] On October 31, 2008, the Board wrote to the complainant asking for his position in relation to the respondent's September 15, 2008 submission. On November 14, 2008, the complainant wrote that the subject matter contained in his complaint was related to his collective agreement and that the Board had jurisdiction over that collective agreement.

### **C. Complaint 561-02-346**

[10] The Board received this complaint on August 27, 2008. The complainant alleged that the respondent violated paragraph 190(1)(g) of the *Act*. On April 27, 2004, the complainant filed a grievance against his employer about the calculation of benefits quantum and overtime for the period that he was working part-time. On May 20, 2008, the respondent advised the complainant that it was not prepared to refer the grievance to adjudication and explained the reasons for its decision. The complainant was not satisfied with the decision, and he filed this complaint.

[11] In an appendix attached to the complaint form, the complainant wrote that the respondent did not complete the grievance review in a timely fashion and that it did not give proper respect and attention to the grievance. The complainant requested that the respondent award him damages for its failure to refer his grievance to adjudication. The complainant provided no details or facts to support his allegations and his request for damages. In its submission of September 15, 2008, the respondent argued that the complaint should be dismissed without an oral hearing because the complainant has failed to establish a *prima facie* violation of section 187 of the *Act*.

[12] The respondent also argued that, on May 20, 2008, it provided the complainant with a detailed explanation of the reasons it decided, after carefully reviewing the file, not to refer his grievance to adjudication. The respondent arrived at that decision by concluding that an adjudicator did not have jurisdiction over the part of the grievance dealing with pension and that, on the other issues, the grievance would be rejected because of timeliness. The grievance was filed on April 27, 2004 for compensation issues for the period from 1996 to 2002. At best, an adjudicator could accept that the

grievance was timely but the adjudicator would apply the corrective action to the 25 days preceding the date on which the grievance was filed, which is long after the 1996 to 2002 period. As a result, the respondent explained to the complainant that there was nothing to be gained in pursuing his grievance at adjudication.

[13] On February 3, 2009, the Board wrote to the complainant asking for his position in relation to the respondent's September 15, 2008 submission. On February 25, 2009, the complainant provided the Board with more detail about the basis of his complaint. The complainant stated that his grievance was timely. He also argued that the respondent failed in its constitutional responsibility to improve and protect wages and terms of employment for employees. The complainant is of the opinion that the respondent's lack of presence and its failure to respond to employees are violations of its duty of fair representation. Finally, the complainant argued that the process through which the respondent decides to pursue a grievance is arbitrary and is bad faith. The complainant based that argument on the fact that the respondent's analyst never consulted or communicated with the complainant's local or regional union representatives to form a reasonable assessment of the facts.

## **II. Reasons**

### **A. Complaints 561-02-227 and 561-02-345**

[14] The respondent argued for each complaint, that the complainant did not establish a *prima facie* violation of section 187 of the *Act*, and that the complaints should be dismissed.

[15] In complaint 561-02-227, the complainant mentioned his dissatisfaction with the settlement achieved by the respondent before the adjudication hearing. The complainant seeks damages from the respondent for its failure to represent his grievance. In complaint 561-02-345, the complainant mentioned that the respondent failed to fully represent his grievance and that it committed an unfair labour practice. No mention is made in those two complaints that the respondent acted in bad faith or in a manner that was arbitrary or discriminatory. Furthermore, the complainant did not submit any facts or details to support his allegations.

[16] In those two complaints, it is clear to me that the complainant did not establish a *prima facie* violation of section 187 of the *Act*. Those complaints, on their face, do not show a reasonable link to the prohibitions listed in that section. Even if the

complainant were to prove that the facts alleged in the complaints are true, it would not represent an arguable case that the respondent acted in bad faith or in a manner that was arbitrary or discriminatory.

[17] The respondent, as a bargaining agent, has the right to refuse to represent a member, and a complaint to the Board is not an appeal mechanism against such a refusal. The Board will not second-guess the bargaining agent's decision. The Board's role is to rule on the bargaining agent's decision-making process and not on the merits of its decision. For the Board to intervene, a complainant should first, at a minimum, establish a violation of section 187 of the *Act*.

[18] Those two complaints originate from grievances that the complainant filed against his employer. The basis of complaint 561-02-227 is the respondent's refusal to refer a grievance to adjudication. The basis of complaint 561-02-345 is the respondent's refusal to pursue some of the issues in a grievance at the final level of the grievance procedure. In each case, the respondent provided the complainant with a detailed explanation of the reasons for its refusal. It is clear that the complainant did not agree with the refusal, but he never informed the Board as to why, and also how, those reasons represent a violation of section 187 of the *Act*. In not doing so, he did not establish a *prima facie* case of such a violation.

[19] In complaint 561-02-345, the complainant also alleged a violation of paragraph 190(1)(e) of the *Act*. I agree with the respondent's submission that paragraph 190(1)(e) has no application since it deals with implementing collective agreements or arbitral awards. The complainant's employer is responsible for implementing collective agreements or arbitral awards, not the bargaining agent.

#### **B. Complaint 561-02-346**

[20] In complaint 561-02-346, the complainant mentioned that the respondent did not give proper respect and attention to the grievance, and he is claiming damages for its failure to represent his grievance at adjudication. In his February 25, 2009 submission, the complainant argued that the respondent did not properly represent him, that it acted arbitrarily and in bad faith, and that it did not contact the local and regional union representatives before making its decision.

[21] In its May 20, 2008 letter, the respondent explained in detail the reasons for not referring the grievance to adjudication. In its September 15, 2008 submission to the Board, the respondent reiterated those reasons. Basically, the grievance was not timely, and it referred to issues that occurred more than 25 days before the grievance was filed. For the respondent, there was no point in referring the grievance to adjudication.

[22] The respondent did nothing that was arbitrary or in bad faith in arriving at its conclusion. There was also no point in the respondent enquiring with the local or regional union representative. The issue of timeliness and the retroactive impact of a grievance are matters of law. The respondent knew the circumstances of the grievance, and it had all the information in hand to make, in good faith, a non arbitrary decision not to refer the grievance to adjudication.

[23] In *Canadian Merchant Service Guild v. Gagnon et al.* [1984] 1 S.C.R. 509, the Supreme Court of Canada established that it is sufficient for a bargaining agent to demonstrate that it has looked at the circumstances of the grievance, considered its merits and made a reasoned decision whether to pursue the case. The complainant did not convince me in this case that the bargaining agent did not meet its legal obligation in refusing to refer his grievance to adjudication. To the contrary, I believe that the respondent acted conscientiously and that it took the time to objectively analyze the situation before concluding that there was nothing to be gained from referring the grievance to adjudication.

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

*(The Order appears on the next page)*



**III. Order**

[25] The complaints are dismissed.

March 6, 2009.

**Renaud Paquet,  
Board Member**