Date: 20100511

File: 561-34-206

Citation: 2010 PSLRB 61

Public Service Labour Relations Act

Before the Public Service Labour Relations Board

BETWEEN

IAN DAYKIN

Complainant

and

UNION OF TAXATION EMPLOYEES, JOHN GORDON, BETTY BANNON, ROBERT CAMPBELL, KENT MACDONALD, GARY ESSLINGER, TERRY RUYTER, PAMELA ABBOTT, CHRIS AYLWARD, MARCEL BERTRAND, SHAWN BERGERON, LINDA CASSIDY, JERRY DEE, SABRI KHAYAT AND NICK STEIN

Respondents

Indexed as
Daykin v. Union of Taxation Employees et al.

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

REASONS FOR DECISION

Before: Renaud Paquet, Board Member

For the Complainant: Linda Shutiak

For the Respondents: Jacquie de Aguayo, Public Service Alliance of Canada

Decided on the basis of written submissions
filed January 11 and 24 and February 8, 2008, and April 19 and May 3, 2010.

I. Complaint before the Board

[1] On November 28, 2007, Ian Daykin ("the complainant") filed a complaint with the Public Service Labour Relations Board ("the Board") under paragraph 190(1)(*g*) of the *Public Service Labour Relations Act* ("the *Act*"). The complainant alleged that the Union of Taxation Employees ("the UTE"), John Gordon, Betty Bannon, Robert Campbell, Kent MacDonald, Gary Esslinger, Terry Ruyter, Pamela Abbott, Chris Aylward, Marcel Bertrand, Shawn Bergeron, Linda Cassidy, Jerry Dee, Sabri Khayat and Nick Stein ("the respondents") committed an unfair labour practice within the meaning of section 185 of the *Act*. The UTE is a component of the Public Service Alliance of Canada ("the PSAC"), which is the bargaining agent.

[2] The complainant alleged that he had been subjected to arbitrary actions by the respondents, which led to disciplinary action being imposed on him. He also alleged that his right to appeal that disciplinary action had been denied by the national presidents of the UTE, Betty Bannon, and of the PSAC, John Gordon. In further correspondence to the Board, the complainant also alleged that the PSAC and the UTE did not properly handle a series of complaints that he made against Ms. Bannon.

[3] In his complaint, the complainant did not refer to any specific provisions of the *Act* other than paragraph 190(1)(*g*). After analyzing the documents submitted by the complainant, it is clear that his complaint can involve only the following provisions of the *Act*:

> . . .
>
> ***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).*
>
> . . .
>
> ***188.*** *No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall*
>
> . . .
>
> *(*b*) expel or suspend an employee from membership in the employee organization or deny an employee membership in the employee organization by*

> *applying its membership rules to the employee in a discriminatory manner;*
>
> *(*c*) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization's standards of discipline to that employee in a discriminatory manner;*
>
> . . .
>
> ***190.** (1) The Board must examine and inquire into any complaint made to it that*
>
> . . .
>
> *(*g*) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*
>
> . . .

[4] On October 28, 2009, the Board advised the parties that the hearing would take place in Edmonton, Alberta. On November 6, 2009, the complainant informed the Board that, in May 2008, he had moved to the Maritimes. He requested that the hearing be moved to Saskatoon, Saskatchewan, because his representative lived there. He also requested to be allowed to testify via teleconference or video-conference. The respondents opposed that request and suggested that the hearing take place in Edmonton or Ottawa. In his correspondence to the Board, the complainant insisted on an oral hearing and on the Board not deciding the complaint based on written submissions.

[5] After analyzing the documents already on file, I decided that, pursuant to section 41 of the *Act*, it might be possible to decide the complaint on the basis of supplementary written submissions. The parties were advised of that decision on April 6, 2010.

II. Summary of the submissions

A. For the complainant

[6] The complainant submitted abundant written material to substantiate his complaint. That material is related to two series of incidents. First, the complainant submitted his version of what happened during the investigation that led to his union membership being suspended. He also referred to the actual suspension of his

membership and to the PSAC's appeal process. Second, the complainant submitted his version of what happened after he made a series of complaints against Ms. Bannon. This summary of his submissions is limited to the elements essential to deciding the complaint.

[7] In August 2005, 43 complaints were made against the complainant by members, local officers or regional officers of the UTE. According to the complainant, none of the allegations made by those complainants was founded. However, the investigation committee concluded that the complainant had violated the UTE's harassment policy and that he had not respected his oath of office. As a result, the PSAC suspended the complainant's membership for three years, effective October 4, 2006. The complainant appealed that decision. He took issue that, in late September 2007, the PSAC appointed Mike Tarnawski as the chairperson of the appeal board.

[8] The complainant submitted that, on April 13, 2006, he made eight formal complaints to the PSAC against Ms. Bannon. On April 19, 2006, the PSAC's national president informed him that those complaints should have been submitted to the UTE because they involved Ms. Bannon in her capacity as a component president and not her actions under the PSAC's activities. The complainant did not agree with that reply because he strongly believed that those complaints should have been dealt with by the PSAC. There was much correspondence between the complainant, the PSAC and the UTE on that issue between April and December 2006. On September 11, 2007, the complainant again wrote to the UTE's national vice-president to have the complaints dealt with by the PSAC. On October 3, 2007, the UTE's national vice-president informed the complainant that the decision on the matter was final and that, as stated in his April 13, 2007 letter, the matter was closed.

[9] On April 27, 2010, the Board wrote to the complainant, asking him if his appeal to the PSAC was withdrawn. On May 1, 2010, the complainant replied with the following: "Yes, because Mr. Daykin had already retired, his appeal to the PSAC was withdrawn & did not proceed."

B. <u>For the respondents</u>

[10] The respondents submitted that the complaint is untimely and that it should be dismissed on that basis alone. The matters raised by the complainant occurred in

2005, 2006 and early 2007. The complaint was made well after the 90-day time limit as is clearly prescribed by subsection 190(2) of the *Act*.

[11] In the alternative, the respondents submitted that the complainant failed to establish that they acted in a discriminatory or arbitrary manner with respect to applying the PSAC's and the UTE's standards of discipline.

III. Reasons

[12] Part of the complaint relates to how the PSAC processed eight formal complaints that the complainant made against Ms. Bannon. The complainant did not submit that he was disciplined for making those complaints. Rather, he alleged that those complaints should have been handled by the PSAC and not the UTE. I have no jurisdiction to examine that issue, which is an internal union matter. Pursuant to section 188 of the *Act*, the role of the Board, on such internal union matters, is limited to deciding whether internal union discipline was applied or a penalty was imposed in a discriminatory manner. Even if the complainant were to prove to me that the PSAC and the UTE were wrong in their decisions about the handling of the complaints against Ms. Bannon, I would conclude that I do not have jurisdiction over that part of the complaint.

[13] The other part of the complaint relates to a three-year suspension of the complainant's membership imposed by the PSAC, effective October 4, 2006. Pursuant to subsection 190(3) of the *Act*, for the Board to have jurisdiction, the complainant first would have had to go through the PSAC's internal appeal process. Subsection 190(3) reads as follows:

> ***190.*** *(3) Subject to subsection (4), no complaint may be made to the Board under subsection (1) on the ground that an employee organization or any person acting on behalf of one has failed to comply with paragraph 188(*b*) or (*c*) unless*
>
> > *(*a*) the complainant has presented a grievance or appeal in accordance with any procedure that has been established by the employee organization and to which the complainant has been given ready access;*
> >
> > *(*b*) the employee organization*

> *(i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to the complainant, or*
>
> *(ii) has not, within six months after the date on which the complainant first presented their grievance or appeal under paragraph* (a)*, dealt with the grievance or appeal; and*
>
> (c) *the complaint is made to the Board not later than 90 days after the first day on which the complainant could, in accordance with paragraphs* (a) *and* (b)*, make the complaint.*

[14] In his April 19, 2010 submission, the complainant wrote the following in reference to that appeal process:

. . .

> *Mr. Daykin did avail himself of the process by which he could Appeal the ruling of the "PSAC" decision. However, by the time a Tribunal Chair was named, Mr. Daykin had already retired. The reinstatement of Mr. Daykin's "good member" status was no longer relevant.*

. . .

[15] In his May 1, 2010 submission, the complainant informed the Board that he had withdrawn his appeal to have his suspension reviewed. Consequently, the conditions of subsection 190(3) of the *Act* were not satisfied, and I do not have jurisdiction to hear that part of the complaint. Even though the complainant filed an appeal against his membership suspension, he withdrew it. The role of the Board is not to substitute itself for that appeal process but rather to examine, when there are no remaining internal recourses open to a union member, complaints about discrimination involving the application of union discipline and standards of discipline. That examination would take place only after a complainant has exhausted all internal union review or appeal mechanisms.

[16] Because I already concluded that I do not have jurisdiction to hear this complaint, I do not have to deal with the respondent's argument about timeliness.

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

(The Order appears on the next page)

IV. Order

[18] The complaint is dismissed.

May 11, 2010.

Renaud Paquet,
Board Member