Date: 20120418

File: 560-34-53

Citation: 2012 PSLRB 48

Canada Labour Code

Before the Public Service Labour Relations Board

BETWEEN

DENIS LAPOINTE

Complainant

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Lapointe v. Canada Revenue Agency

In the matter of a complaint made under section 133 of the *Canada Labour Code*

REASONS FOR DECISION

Before: Joseph W. Potter, Board Member

For the Complainant: Himself

For the Respondent: Anne-Marie Duquette, counsel

Decided on the basis of written submissions
filed September 27, October 13 and November 10, 2011.

Complaint before the Board

[1] On February 12, 2009, Denis Lapointe ("the complainant") filed a complaint under section 133 of the *Canada Labour Code* ("the *Code*"). The complaint is very similar to one filed by David Babb (PSLRB File No. 560-34-52), and in fact, the two cases were joined for evidentiary purposes. However, before a full hearing could commence, the Canada Revenue Agency ("the respondent") filed an objection to the jurisdiction of the Public Service Labour Relations Board ("the Board") to hear this matter. The parties requested that I deal with this jurisdictional issue at the outset. Depending on the result, the matter would end, or the hearing would proceed.

[2] Section 3 of the complaint form is titled, "Concise statement of each act, omission or other matter complained of, including dates and names of persons involved." In this section, the complainant wrote as follows:

> *Employees of the Canada Revenue Agency have taken actions against me contrary to section 147 of the Canada Labour Code. These actions appear to be deliberate and systemic. These actions are consistent with similar actions taken against Dave Babb and Samantha Scharf.*
>
> *Employees of the Canada Revenue Agency have knowingly and willfully violated my rights and taken action/inaction against me contrary to rights under the Canadian Human Rights Act, the Canada Labour Code and the Workers Compensation Legislation. Numerous employees of the Canada Revenue Agency on various levels and in various capacities appear to be involved. I have been harmed and suffered injury as a result. H.R.S.D.C and W.S.I.B appear to have been involved as participants.*
>
> *My attempts to gather information needed to identify such persons appear to have been intentionally obstructed by representatives of my Employer at 875 Heron Rd. and A.T.I.P/C.R.A.*
>
> *These matters have been ongoing for quite some time, focusing on the "RE: OSH minutes" and "RE: Questions about the Plan of Action posted at 875 Heron Rd." chain of communications the persons primarily involved are as follows: William Baker, Gary Gustafson, Steve Hertzberg, Kathy Mawbey, Chris Aylward, Gillian Pranke, Denis Maurice, Parise Ouellette, Greg Currie, Jean Laronde, Claude Tremblay, Lysanne Gauvin, Larry Hillier, Gordon O'Connor, Catherine Bullard, Lucie Bisson, Therese Awada, Louise Lambert, Lyne Lamoureux, Renee Donata, Blair, Bill-R; Bryant, Carl; Dodds, Eldon;*

> *Evans, Sean; Lapointe, Marie-Claude; Lawrence, Jeffrey; Miller, Shelley; Moore, Greg; Stranberg, Bert; Whyte, June, Moffet; Jeffrey. Persons from W.S.I.B, H.R.S.D.C, Health Canada and Tedd Nathanson (consultant) appear to be directly involved as well.*
>
> *Recent e-mail communications and gathered information indicates deliberate actions have been taken against me and others contrary to our rights. Reference "Re: OSH minutes" e-mails that are presently ongoing.*
>
> *This is as concise as I can be.*
>
> [*Sic* throughout]

Analysis

[3] Following extensive correspondence between the Board and the complainant, a hearing was scheduled for September 16, 2011. That hearing was postponed at the request of the other complainant, Mr. Babb. On September 27, 2011, the respondent filed a written objection to the Board's jurisdiction to hear the complaint.

[4] The complainant replied to the respondent's written objection on October 13, 2011, via email. The respondent's rebuttal was filed on November 10, 2011.

[5] As was pointed out in *Gaskin v. Canada Revenue Agency*, 2008 PSLRB 96, preliminary issues may be determined based on the record, without convening an oral hearing. Paragraph 240(*c*) of the *Public Service Labour Relations Act* ("the *Act*"), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, ch. 22, states that the provisions of the *Act* apply to the complaint before the Board. Further, section 41 of the *Act* states as follows: "[t]he Board may decide any matter before it without holding an oral hearing."

[6] In its submission, the respondent wrote as follows:

> . . .
>
> 1. *The complainant has been an employee of the Canada Revenue Agency (the CRA or the employer) from May 28, 1992 until August 5, 2011.*
>
> 2. *During the course of his career with the CRA, the complainant was never disciplined.*

> *3. From August 25, 2008 until August 5, 2011, the complainant was on sick leave (with pay for a certain period, without pay for the rest) and therefore, was not at the workplace.*
>
> . . .

[7] In its written submission, the respondent wrote that the complainant was asked for particulars with respect to his complaint. On September 22, 2011, the complainant sent the following email to the respondent:

> . . .
>
> *Dear Ms. Duquette,*
>
> *As promised in my September 19th e-mail which was sent to Mr. Miller as well as to Mail.Courrier@pslrb-crtfp.gc.ca and cc'ed to yourself, Mary Mackinnon, Richard Fader, Betts Lalonde, Nick Gualtieri and Ms. Palumbo. Please accept this as my particulars without having received your Board ordered employer disclosure materials.*
>
> *To be compliant, here are the primary circumstances as I said in my complaint. My rights under C.L.C etc.. were violated, my employer is aware of what was going on, more so than me, as my employer refuses to provide disclosure (after being ordered twice) to date you will see the names of people in my complaint that I am sure of. I am sure you are aware of why I have been delayed as a result of the employers unwillingness to meet ordered disclosure. There is nothing here my employer does not know about.*
>
> *We realized, we were to be terminated, we became aware the same pattern of actions were consistent and systemic. We suspected many things were going on behind closed doors as many patterns became evident, we realized we were being subject to a strategic plan for dismissal that would be inevitable. We were all injured due to environmental conditions of the workplace. We all had work refusals ongoing and we were involved in others as well. We all had complaints under the C.L.C and were involved in others as well. We all had been forced to take issues to the Ministers and it had become apparent that we were certainly being targeted as a result. We were lumped together by the employer. All levels of management were involved. H.R.S.D.C was involved. We all had our federal workers compensation undermined with the help of H.R.S.D.C, rights to claims were knowingly violated, our claims were dead. We could see the employer was circumventing their obligations to us as work injured employees. Employer policies were ignored, The Code of Ethics was suspended, the Discipline policy was suspended,*

> *the Injury and Illness policy was suspended etc… etc… Our rights under the Canada Labour Code, right to know, right to participate were being violated by the employer and the O.S.H committee/Policy committee. Continued complaints, we were making regarding violations of the Canada Labour Code were ignored. Our rights as employees were suspended.*
>
> *Although required to go to A.T.I.P in accordance with the employers directions/O.S.H committee directions to access our right to know under the C.L.C, it became apparent that our information requests were being obstructed. We would not get any information for our doctor's regarding the workplace exposures and hazard's etc… that we knew existed. This had many ramifications. It is no secret we had been union representatives involved in Health and Safety and constant violations of the C.L.C were ongoing. We suffered for this as well. We were all being forced into the environment that injured us, regardless of any risk to health. Any aspects of return to work was being undermined, it was clear that no matter what stages we were at, this employer would not allow us to return to safe work, and that we would be subject to further harm as the employer had no intention to ensure our health and safety was protected (consistent with our employment history) and the necessary parties required to ensure our protections would be excluded indirectly and directly.*
>
> . . .
>
> [*Sic* throughout]

[8] At paragraphs 12 and 13 of its written submission, the respondent wrote as follows:

> *12. There are 2 issues:*
>
> 1. *Should the PSLRB dismiss this complaint without a hearing because the essential components of a 133 CLC complaint are not present in Mr. Lapointe's complaint?*
>
> 2. *Is the PSLRB without jurisdiction to hear this complaint because it is untimely?*
>
> *13. The employer submits that the answer to both questions is "yes".*

[9] The complainant filed a complaint pursuant to section 133 of the *Code*, which reads in part as follows:

> ***133.*** *(1) An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to subsection (3) make a complaint in writing to the Board of the alleged contravention.*
>
> *(2) The complaint shall be made to the Board not later than ninety days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*
>
> . . .

[10] Section 147 of the *Code* reads as follows:

> ***147.*** *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee*
>
> *(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*
>
> *(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or*
>
> *(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*

[11] *Gaskin*, at paragraph 57, states as follows:

> *[57] It is quite possible to lose sight of the essential subject of the complaint when reviewing the many allegations that the complainant makes against the employer and against public officials. As a self-represented party in this proceeding, the complainant need not be expected to frame the cause of his complaint in unequivocal and precise terms. On the other hand, he does have a responsibility to make the basis of his complaint sufficiently clear to the Board so that it can understand the nature of his case and so that the respondent can know the allegations against which it must defend.*

The same can be said in this case. The fact that the complainant is self-represented does not mean that he is entitled to make allegations that are not based on facts. If a violation of section 147 of the *Code* has occurred, the complainant, self-represented or

not, has an obligation to clearly state what actions were allegedly taken and when those actions allegedly occurred. Only following the provision of this information can the respondent investigate the allegations and respond to them.

[12] In my view, the complaint form filed by the complainant does not contain any specifics about an alleged action of the respondent that could arguably be contrary to section 147 of the *Code*. That means that the Board must turn to the subsequent information supplied by the complainant to see if an action allegedly taken by the respondent could arguably be a violation of section 147.

[13] The complainant's September 22, 2011 email is the first area to examine to determine if facts were presented that possibly relate to section 147 of the *Code*. The complainant stated in this email, "[p]lease accept this as my particulars . . . ."; the email would buttress the complaint form.

[14] I find the first two paragraphs of the September 22, 2011 email introductory. They do not refer to a violation of section 147 of the *Code,* with the possible exception of the statement, "[m]y rights under C.L.C etc.. [*sic*] were violated . . . ." I find that statement so vague as to not alleging any arguable violation of section 147.

[15] The third paragraph of the September 22, 2011 email begins as follows: "[w]e realized, we were to be terminated . . . ." The paragraph then carries on in general terms about a number of issues, but mentions nothing specific about respondent's actions that could arguably be a violation of section 147 of the *Code*. The complainant did not allege having been dismissed, suspended, laid off or demoted or having suffered a financial or other penalty, loss of remuneration or disciplinary action or threat of disciplinary action in the 90-day period before filing his complaint as far as I can see. He begins his explanation with a reference to his anticipated termination but the termination took place in August 2011 and his complaint was filed in February 2009, so the termination cannot be the subject of the complaint. The termination can be challenged via another route, but not via this complaint.

[16] The last paragraph of the September 22, 2011 email refers to difficulties obtaining information via an access-to-information (ATIP) request. I certainly have no jurisdiction over that issue, which does not relate to section 147 of the *Code*. Similarly, I do not find any other issues raised in the last paragraph of the email that specifically

refer to an action taken by the respondent within the 90-day period, which would allow me to examine the complaint further.

[17] I turn now to the complainant's reply to the respondent's objection to determine if anything in it allegedly supports an arguable violation of section 147 of the *Code*.

[18] The complainant writes, "[d]id I suffer a penalty?" and answers this question in the affirmative by stating that he was terminated. Again, this may well be challenged, but the 2011 termination cannot be part of this complaint filed in 2009.

[19] The complainant then writes, "[w]ere my employment rights violated?" and answers, "[m]ost definitely and the employer knows this better than anyone." Again, nothing is specified about an action allegedly taken that could arguably be considered a violation of section 147 of the *Code*. Vague statements and assertions are not sufficient to clothe me with jurisdiction to hear a complaint that may not arguably allege a violation of section 147.

[20] The complainant's reply continues in this question and answer format. Two questions are posed that, I believe, may arguably relate to a complaint being made under section 133 of the *Code*.

[21] The first question posed is "[w]as I about to testify in proceeding?" The complainant answers, "[y]es, in my work refusal, in Dave's work refusal and in Samantha's as well." Section 147 of the *Code* prohibits an employer from taking retaliatory action against an employee because the employee ". . . has testified or is about to testify in a proceeding taken or an inquiry held under this Part. . . ." The action that the complainant is complaining about is his termination. He is linking his upcoming testimony in a work refusal proceeding with his termination. Not wishing to be repetitive, the termination, if challenged, would be heard outside this complaint.

[22] I mentioned that, possibly, two questions were posed that might give me jurisdiction to hear some issues. The second question reads as follows: "[w]as [*sic*] there circumstances within the 90 day period giving rise to our complaints provided to the employer?" The complainant answers as follows: "[a]t the October 5th pre-hearing, I provided the employer with several circumstances which were within the 90 day

period. This will be shown in my exhibits." The complainant then submits that the following took place within the 90-day period:

> ***1.*** *I had an on-going work refusal in the appeal stage (within the 90 days period and later) of a major/ complex electrical work refusal and Mr. Babb was my on-going and fully participating workplace representative. I have e-mail communications to back this. It was on-going as I was appealing matters that the employer and H.R.S.D.C would not allow to be considered as part of continued danger. Even thought these dangerous findings had always been reported since 1999 and two electrocutions had occurred, the employer had first attempted to down play this serious problem even after it was reported to the Occupational Safety and Health committee following the second electrocution. (in a complex which only had approx. 10% sprinklers coverage). The incomplete repairs and the fact that fire issues were not to be considered as part of continued danger in the repair process in which (live and un-protected) 347 volt wires lying all over the ceilings of the complex had been addressed in a manner in which I believed could not fully guaranty a 100% removal of danger Had I been allowed to participate in the repair planning processes including input into the scope of work preparation, this would have eliminated all concern except for human error. The only thing Mr. Babb and I (not the entire committee) were permitted to see at completion of the project was a very large binder the contractor was required put together during all stages of repairs. With a careful review of the scope of this project, a review of the very large binder and completion reports could not guaranty us a safe repair with an 80% completion. Our request to have all ceilings fully inspected was rejected. My representation for this appeal was re-tracted the Friday before the my Tribunal hearing (the following Monday). It was then that I was informed that I would need approx. $9,000.00 before Monday to keep my present representation. In duress the appeal was dropped that Friday after also being advised that it could be tossed for a reason I did not understand. On that week-end I changed my mind and attempted to reverse my decision by e-mail to the Tribunal. My request was rejected and a written response was also sent to my home address.*
>
> [*Sic* throughout]

I can see no alleged action in that submission that, if it was taken by the respondent, could even remotely be connected with section 147 of the *Code*. There appears to be a number of health and safety issues, but I would not have jurisdiction to hear them under this section 133 complaint.

[23] The complainant then cites issues related to the structure of the workplace building, as well as to ATIP requests. They also are not within my jurisdiction under this section 133 complaint.

[24] The complainant then states as follows:

> ***d)*** *A demoting position was sent to me Registered Mail at the end of my sick leave (just before I had to go on Un-employment Insurance and within the 90 day period prior to filing my 133 complaint. December 9, 2008. In the A.T.I.P materials requested on January 4, 2009 it is clear that my past manager Mr. Boyd was advised by Staff Relation that the classification of my electrician position was equivalent to a AS-1, PM-1 or CR-5 position, yet the Reasonable Job offer which I received on December 9, 2008 was far from equivalent, would further put my health at risk and could not be refused. Refusing would lead to a termination. It also became quite clear to all three of us at this same time (in this 90 day period prior to filing our complaints) that if we were to return to work it would be back in the building that harmed our health. They were going ahead with a salary protection which would cost the section over $10,000.00 a year. This same demoting position was the same one being offered 2 and a half years later when they terminated me after they refused to allow me the rehabilitation program I was requesting from Sun Life.*
>
> [*Sic* throughout]

If I were to accept this alleged respondent's action in the light most favourable to the complainant and find that an alternate position was being offered to him because he was going to testify at an upcoming proceeding under Part II of the *Code* (which he had said he was about to do), I still do not believe that I would have jurisdiction to hear this complaint. The complainant admits that there was no loss of salary with this alternate employment (he stated that there was "salary protection"), so no financial penalty would have been be encountered, and therefore, it would not fit within section 147 of the *Code*. Furthermore, I do not find this to be a disciplinary demotion of the type found in *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70. In that decision, the adjudicator did find a disciplinary demotion did occur in spite of the fact there was no loss of salary. However, in *Robitaille*, at paragraph 229, the adjudicator wrote, in part:

> *[229] . . . the punitive nature of his reassignment was evident in that he was no longer supervising employees, was performing none of the duties of his substantive position and*

> *was isolated from his normal place of work. The duties assigned to him had little value; he often had nothing to do, and he was relegated to a junior officer's office. . . .*

This, I find, is very different from the facts in this case, and I cannot come to the conclusion that the complainant suffered a disciplinary demotion.

[25] The rest of the complainant's reply refers to his health problems, building code violations, exposure to asbestos and other issues, which are outside my jurisdiction with respect to this complaint.

[26] After reviewing all the material that the complainant submitted about his complaint filed on February 12, 2009, alleging that the respondent violated section 147 of the *Code*, I can find nothing that would arguably give me jurisdiction to look into the matter. I reiterate that vague statements and suggestions do not clothe me with jurisdiction to hear a complaint that cannot arguably allege any violation of section 147.

[27] In February 2012, the complainant submitted two separate emails which, he alleged, buttressed his case. I do not agree. I can find nothing in either email which would allow me to take jurisdiction in this complaint.

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

(The Order appears on the next page)

Order

[29] The respondent's objection is allowed.

[30] The complaint is dismissed.

April 18, 2012.

Joseph W. Potter,
Board Member