Date: 20120720

File: 560-34-82

Citation: **2012 PSLRB 76**

Canada Labour Code

Before a panel of the Public Service Labour Relations Board

BETWEEN

DWIGHT W. GASKIN

Complainant

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Gaskin v. Canada Revenue Agency

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

REASONS FOR DECISION

Before: Kate Rogers, a panel of the Public Service Labour Relations Board

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Decided on the basis of the case file

Complaint before the Board

[1] This is a complaint filed by Dwight W. Gaskin ("the complainant") on December 19, 2011 under sections 133, 147 and others of the *Canada Labour Code,* R.S.C. 1985, c. L-2 (*CLC).* At its core, the complaint concerns a letter dated October 31, 2011 from the Canada Revenue Agency, which terminated the complainant's employment on the grounds that he had been absent from the workplace since August 8, 2008 and that all attempts by the respondent to reach him had failed. The complainant alleges that this letter is part of an ongoing issue related to his alleged refusal to work for safety reasons. The complainant states in the letter attached to his complaint that the ". . . refusal to work and the belief of danger remains ongoing and the respondent has done nothing. . . . "

[2] The complaint is a series of lengthy documents and letters that reference offences not only under the *CLC* but also under several international statutes and covenants, such as the *Rome Statute and* the *Convention on the Prevention and Punishment of the Crime of Genocide*, among others. In his letter accompanying the complaint form, the complainant described his complaint as follows:

. . .

> *The CRA organization is an agent of the government of Canada. The removal of my salary effective October 2007 and attempts to imply long term disability benefits in their letter of November 1, 2011 is an offence under international criminal law. Your HRSDC records will contain my complaint for which omission of duty to act may be subject to review internationally as well. Notwithstanding that complaint, this letter dated November 1, 2011 is another breach of the omission of duty to act under the applicable health and safety legislation under the Canada Labour Code. Refusal to work and many of the applicable sections are not limited to the following: 2. 123-128, 131, 133, 134,147, 148-154, 239, 240, 251, and 258. The Refusal to Work and the belief of danger remains ongoing and the employer has done nothing: in fact it has omitted duty to act. Please ensure this matter is considered to be a new complaint of CLC II occupational health and safety provisions and also a Section 240 complaint to the Inspector.*

. . .

[3] On January 24, 2012 the respondent, in response to the complaint, asked that the Public Service Labour Relations Board ("the PSLRB") dismiss it on the grounds that it failed to disclose any specific information on which the complaint relied and did not establish any evidence to support the complainant's allegation that that the respondent had contravened the *CLC*.

[4] Although invited to provide a response to the respondent's submissions, the complainant did not reply.

[5] In November 2008, in 2008 PSLRB 96, another panel of the PSLRB dealt with a strikingly similar complaint from Mr. Gaskin. That complaint was decided on the basis of written submissions. It also was made under section 133 of the *CLC* and alleged that the respondent had taken retaliatory action against the complainant (including putting him on sick leave without pay on August 8, 2008), in contravention of section 147. It is, in my view, important to examine the issues identified and decided by that adjudicator, who described them as follows:

> *1. Do the submissions reveal that the respondent has taken an action against the complainant that is of the type listed under section 147 of the* Code*? That is, did the respondent dismiss, suspend, layoff or demote the complainant, impose a financial or other penalty on him, refuse to pay him, or take or threaten to take disciplinary action against him.*
>
> *2. If the respondent has taken an action of the type listed under section 147, was the action taken for one of the reasons identified under section 147? That is, did the respondent act because the complainant:*
>
> *(a) testified or is about to testify in a proceeding taken or an inquiry held under Part II of the* Code*?*
>
> *(b) provided information to a person engaged in the performance of duties under Part II of the* Code *regarding the conditions of work affecting the health or safety of the employee or of any other employee of the respondent; or*
>
> *(c) acted in accordance with Part II of the* Code *or sought the enforcement of any of the provisions of Part II of the* Code*?*

[6] The PSLRB found that the essence of the complaint was the respondent's decision to put the complainant on sick leave without pay effective August 8, 2008, because he had exhausted his available sick leave credits. It also found that it was at

least arguable that this constituted a "financial or other penalty" as listed under section 147 of the *CLC.* The question then became whether the respondent imposed a financial or other penalty for one of the reasons identified in section 147 of the *CLC*. It found that it had not. In fact, it found that the complainant had not exercised a right identified in section 147. Following a thorough examination of the facts that led to the complaint, it concluded that there was no link between the respondent's decision to put the complainant on sick leave without pay and any of the enumerated factors of section 147 of the *CLC*.

[7] I have reviewed all the documents on the record and the decision in *Gaskin v. Canada Revenue Agency,* 2008 PSLRB 96. I have concluded that it is possible to determine the matters in dispute based on the record without further submissions or without convening an oral hearing.

[8] This complaint appears identical to the complaint considered in *Gaskin,* but for the fact that the alleged penalty was no longer the decision to put the complainant on sick leave without pay but that it was the respondent's decision to terminate the complainant's employment because he has been absent from the workplace on leave without pay since August 8, 2008 and has provided the respondent with no information as to his status or his intention to return to work. The complainant has not been in the workplace since the events considered in the earlier complaint. The new complaint does not establish a prima facie case for the exercise of any rights protected by section 147 of the *CLC* by the complainant. On its face, the new complaint appears to treat the termination of employment as part of a continuum that started with the removal of the complainant's salary in October 2007. That, as well as the events up to August 2008, has already been considered by the PSLRB.

[9] It seems to me that, although the termination of employment is potentially a new penalty, the facts relating to the reasons for the alleged retaliation, as set out in section 147 of the *CLC*, remain the same as those already considered and decided by the PSLRB. This complaint states that, in essence, the respondent retaliated against the complainant in contravention of section 147 of the *CLC,* for the reasons already considered and dismissed by the PSLRB. The complaint is framed by reference to the original exercise of rights protected by section 147 of the *CLC*, which was already decided in *Gaskin*. The complainant has not alleged any new reasons or grounds or any new exercise of a protected right that would bring his complaint within the parameters

of section 147 of the *CLC*. Given these facts, the complaint as it was filed is moot and must be dismissed.

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

(The Order appears on the next page)

Order

[11] The complaint is dismissed.

July 20, 2012.

Kate Rogers,
a panel of the Public Service
Labour Relations Board