

Date: 20161003

File: 561-02-611

Citation: 2016 PSLREB 102

*Public Service Labour Relations
and Employment Board Act and
Public Service Labour Relations Act*



Before a panel of the
Public Service Labour Relations
and Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

and

**TREASURY BOARD
(Canada Border Services Agency)**

Respondent

Indexed as

Public Service Alliance of Canada v. Treasury Board (Canada Border Services Agency)

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

Before: Bryan R. Gray, a panel of the Public Service Labour Relations and Employment Board

For the Complainant: Abudi Awaysheh

For the Respondent: Joel Stelpstra, counsel

Decided on the basis of written submissions,
filed on April 24, 2013, August 24 and 26, 2016.

REASONS FOR DECISION

Summary

[1] The Public Service Alliance of Canada (“complainant”) filed a complaint against the Canada Border Services Agency (“the respondent”), alleging an unfair labour practice. The complaint alleges that the respondent consistently intimidated and harassed Randy Leach, a union steward, to such an extent that he was forced to go on sick leave. It argues that this amounts to an unfair labour practice since it was interference with its ability to represent its members.

[2] The respondent asks that I dismiss the complaint due to a lack of jurisdiction. It argues that it was filed outside the 90-day deadline set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[3] The determination of this matter will rest upon my finding of whether and when a triggering event occurred that forms the basis of this complaint and whether it occurred within 90 days of the complaint’s filing.

[4] During a pre-hearing conference held in August 2016, the respondent requested a ruling on its previously submitted motion to dismiss the complaint. I requested that the grievor provide its written reply to the motion. After a thorough review of all submissions, I found that I do not have jurisdiction to hear this matter. The complaint was filed well past the 90-day deadline after the event that triggered it. The hearing scheduled for September 7 to 9, 2016, in Kingston, Ontario, was therefore cancelled, and the complaint was dismissed with reasons to follow.

Background

[5] The complainant is certified to represent members of its Local 70027 and filed this complaint in their name in response to alleged events involving Mr. Leach, who is a member of the Border Services (FB) group and who serves as the chief union steward representing the complainant at his place of work, the Lansdowne Port of Entry near Kingston.

[6] The complaint was filed under s. 190(1)(g) of the *Act*, which reads as follows:

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.

[7] Section 185 of the *Act* defines an unfair labour practice as anything prohibited by ss. 186, 187, 188, or 189(1). The provision of the *Act* referenced under s. 185 that applies to this complaint is s. 186(1), which reads as follows:

186 (1) Neither the employer nor a person who occupies a managerial or confidential position, whether or not the person is acting on behalf of the employer, shall

(a) participate in or interfere with the formation or administration of an employee organization or the representation of employees by an employee organization; or

(b) discriminate against an employee organization.

[8] The respondent's motion to dismiss relies upon s. 190(2) of the *Act*, which states that a complaint filed under s. 190(1) must be made within 90 days of the date on which the complainant knew or ought to have known of the circumstances giving rise to it.

[9] The complaint was filed with the former Public Service Labour Relations Board ("the former Board") on March 22, 2013. On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the Board") to replace the former Board. This complaint is being heard by the Board under the authority of the related implementing statutory instruments.

Alleged facts

[10] The complainant alleges that a series of events occurred that led Mr. Leach to go on sick leave. The allegations describe its growing concerns over shift-work schedules and a series of meetings on February 12 and 13, 2012, at which it states Mr. Leach expressed his view that the respondent's representative was hiding a shift-work schedule from the complainant. That representative allegedly replied by stating that a line had been crossed in that his integrity had been questioned.

[11] On September 25, 2012, another meeting took place, at which Mr. Leach again voiced his concerns about how he perceived management was handling shift schedule

changes. Following this meeting, the respondent's representative allegedly emailed Mr. Leach on October 1, 2012, accusing him of defamation due to the concerns that he had voiced.

[12] The complainant further alleges that after he received that email, Mr. Leach sought an immediate transfer to a different workplace. When that was denied, on October 2, 2012, he chose to go on sick leave, allegedly due to the stress the defamation accusation had caused him.

[13] On October 18, 2012, Mr. Leach presented a grievance about the email. Although the respondent agreed to allow him to work at another location, effective November 19, 2012, he still grieved the respondent's initial refusal to transfer him to another workplace. This second grievance was presented on November 19, 2012. The complainant filed this complaint on March 22, 2013, alleging that the respondent had committed and had continued to commit an unfair labour practice in its treatment of Mr. Leach. In its complaint, the complainant refers not only the defamation allegation against Mr. Leach but also the respondent's refusal to relocate his place of work and lack of resolution to the related sick time claim as ongoing harassment of Mr. Leach that interferes with the complainant's ability to represent its members as he serves as the chief steward.

Issues

[14] The issues are whether I lack jurisdiction to hear this complaint because it was filed outside the 90-day time limit set out in the *Act* and whether there are ongoing actions on the respondent's part that amount to a continuing unfair labour practice, which would result in the 90-day time limit not having been exceeded.

[15] The respondent argues that the complaint was triggered by events that occurred on October 1, 2012, when the respondent's representative allegedly accused Mr. Leach of defamation. The respondent further submits that its refusal to reassign him to a different workplace was not ongoing harassment. The refusal occurred on October 2, 2012, and the reassignment was put into effect on November 19, 2012, which is still more than 90 days prior to the filing of the complaint. The complainant claims the respondent's failure to reimburse Mr. Leach for the sick leave he used until his reassignment constitutes ongoing harassment.

Reasons

[16] I do not have jurisdiction to hear this complaint given that it was filed well past the 90-day time limit set by s. 190(2) of the *Act*. The Board and its predecessors have consistently held that this time limit is mandatory and cannot be extended (see *Gibbins v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 36 at para 96).

[17] The circumstances that gave rise to the present complaint, in the alleged facts before me, are without question the incidents of alleged harassing behaviour that caused Mr. Leach to take sick leave the following day. Mr. Leach clearly knew on October 1 and 2, 2012, of these incidents, which the complainant alleges interfered with its ability to represent its members. The subsequent filing of this complaint on March 22, 2013, was far beyond the 90-day time limit, and no facts or arguments were presented as to the complainant not knowing of these events when they occurred on October 1 and 2, 2012.

[18] The complainant argued that the respondent is in continuous violation of s. 186(1) of the *PSLRA* as there have been ongoing discussions to have the Mr. Leach's pending grievances resolved, such that the complaint is not untimely. I am not persuaded by this argument. I do not agree that any matters regarding the outstanding grievances as set out in the complainant's allegations can be characterized as ongoing harassment. Furthermore, I cannot accept the argument that because the grievances are unresolved, the 90-day time limit is put in abeyance. The former Board rejected such an argument in *Lampron v. Professional Institute of the Public Service of Canada*, 2011 PSLRB 29 at paras. 46 and 47, noting that even if discussions are ongoing to resolve a dispute, the date when a complainant knows or ought to have known the circumstances giving rise to the complaint does not change.

[19] If Mr. Leach or the complainant were subject to additional objectionable actions subsequent to October 1 or 2, 2012, their proper remedy would have been to file additional grievances or complaints.

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

(The Order appears on the next page)

Order

[21] The complaint is dismissed.

October 3, 2016.

**Bryan R. Gray,
a panel of the Public Service Labour
Relations and Employment Board**