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File: 561-02-568

Citation: 2016 PSLREB 81

*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

JANELLE MARSHALL

Complainant

and

**UNION OF CANADIAN CORRECTIONAL OFFICERS - SYNDICAT DES AGENTS
CORRECTIONNELS DU CANADA - CSN**

Respondent

Indexed as

*Marshall v. Union of Canadian Correctional Officers - Syndicat des agents
correctionnels du Canada - CSN*

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 Applicant: No one

For the Respondent: Corinne Blanchette, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

Heard at Abbotsford, British Columbia,
August 9, 2016.

REASONS FOR DECISION

Complaint before the Board

[1] On July 9, 2012, Janelle Marshall (“the complainant”) made a complaint against the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the respondent”). She alleged that it had made defamatory allegations against her that had interfered with her career and that complaints were made that became part of an investigation at Matsqui Institution in Abbotsford, British Columbia.

[2] The complaint was filed under s. 190 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”). That provision 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.

[3] Section 185 of the *Act* defines an unfair labour practice as anything prohibited by s. 186(1) or (2), s. 187 or 188, or s. 189(1). The provision of the *Act* referenced under s. 185 that applies to this complaint is s. 187, which reads as follows:

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.

[4] 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 Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Act* before November 1, 2014, is to be taken up and continue under and in conformity with the *Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

The hearing

[5] The parties were advised in a written notice dated December 3, 2012, of the Board's intention to convene a hearing of the complaint. The parties were offered hearing dates early in 2013, and the complainant responded that she would not be available then. The parties then agreed to participate in mediation organized by the Board in 2014, which did not resolve the matter.

[6] The parties were then notified by registered mail that a hearing of the matter was scheduled for August 9 to 11, 2016, in Abbotsford. The letter indicated that those dates were considered "final". A formal notice of the hearing venue was sent to the parties by priority post on July 11, 2016, to the address the complainant had provided as her address for the conduct of matters related to her file. The Board received confirmation by signature of the delivery to that address on July 14, 2016. The notice of hearing advised the parties that if they failed to attend the hearing, the Board could dispose of the matter based upon the evidence and representations submitted at the hearing, without further notice to them.

[7] At the scheduled start time of 9:30 a.m. on August 9, 2016, and at the location noted in the notice of hearing and venue, only the respondent was present. Neither the complainant nor her representative was present. The Board's registry had not received any communication from the complainant indicating a problem with her attendance or requesting a postponement of the hearing.

[8] I delayed starting the hearing. The Board's registry immediately sought to contact the complainant by both email and telephone and left her urgent messages by both means. After 90 minutes had elapsed from when the registry left messages for her, and 120 minutes after the hearing's scheduled start time, I chose to begin.

[9] There being neither a complainant nor a representative to submit evidence in support of the stated allegations, the respondent made a request. Counsel cited the contacts noted earlier that the registry had with both parties confirming the hearing dates and location, and submitted that given the absence of the complainant and of any supporting evidence of her complaint, it should be dismissed for reasons of abandonment.

Reasons

[10] The complainant was notified of the hearing dates and time and did not attend. She did not seek a postponement or send a representative on her behalf. The respondent's representative and witness had prepared and assembled at the hearing venue, at some cost to the respondent, and were ready to proceed.

[11] The Board expended significant public funds to prepare, attend, and conduct the hearing. The setting aside of these dates for this hearing prevented other pending Board cases from being heard at the same time.

[12] As arbitrator Bertrand noted in a recent hearing with a similar outcome (*Navikevicius v. Public Service Alliance of Canada*, 2016 PSLREB 12), the burden of proof in a complaint under s. 190 of the *Act* rests with the complainant (see *Ouellet v. Luce St-Georges*, 2009 PSLRB 107). That burden requires the complainant to present evidence establishing that, on a balance of probabilities, the respondent failed to meet its duty of fair representation.

[13] I find that the complainant failed to present any evidence outlining the details of her complaint to the extent necessary to establish how the respondent's actions violated s. 187 of the *Act*. I can conclude only that she does not intend to pursue her complaint and that she has abandoned it, and I grant the respondent's motion accordingly.

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

(The Order appears on the next page)

Order

[15] The complaint is dismissed.

August 26, 2016.

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