Date: 20170309

File: 561-02-738

Citation: 2017 PSLREB 24

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

WILMALEE PRUDEN

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Pruden v. Public Service Alliance of Canada

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

Before: John G. Jaworski, a panel of the Public Service Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Morgan Rowe, counsel

Heard at Winnipeg, Manitoba,
January 4 to 6, 2017.

I. Complaint before the Board

[1] On January 20, 2015, Wilmalee Pruden ("the complainant") filed a complaint against the Public Service Alliance of Canada ("the PSAC" or "the respondent") under s. 190(1)(g) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The complainant provided additional details on March 5, 2015.

[2] The PSAC responded to the complaint on April 14, 2015, denying that it was in breach of the *Act* and stating that the complaint was untimely as it had not been filed within the time limit set out in s. 190(2) of the *Act*.

[3] At the outset of the hearing, the complainant advised that she had wanted to summon Cheryl Dubree. She had written to the Public Service Labour Relations and Employment Board ("the Board") to request a summons; however, she had heard nothing in response. I issued a summons to Ms. Dubree to attend the hearing at 1:30 p.m. on January 3, 2017. She did attend, pursuant to the summons.

[4] My subsequent review of the Board's file did not disclose that the complainant had made any request for summonses for any witnesses at any time before she made her request before me at the hearing.

[5] In her opening statement, the complainant stated that she would call only two witnesses, herself and Ms. Dubree. After they both had concluded their testimonies, the complainant then indicated that she wished to call another witness. However, that witness was not present; nor was a summons ever requested for that witness.

[6] During the course of the hearing I ordered that the complainant's provincial health insurance identification number be redacted from the documents filed in evidence.

II. Summary of the evidence

[7] The complainant is currently employed with the Department of Indian Affairs and Northern Development (DIAND or "the employer") as an administrative clerk at the CR-04 group and level in the Lands Directorate in Winnipeg, Manitoba. At the time of the hearing, she was in her eighteenth year with the federal public service.

[8] In or about 2006 (the exact date was not provided in evidence), due to the effects of an automobile accident, the complainant moved out of her substantive

position as a regional liaison support officer (classified at the AS-02 group and level) into a CR-04 position at the Kiizhigongwigaamik (In the Sky) Lodge ("the Lodge"), which is located in the same building as her substantive position, albeit on a different floor. While working there, she continued to be paid at her AS-02 rate.

[9] In or about October 2012, the complainant returned to her substantive position. However, the evidence disclosed that she encountered difficulties.

[10] On April 16, 2013, the complainant emailed Ms. Dubree, who at that time was the local vice-president of the Union of National Employees ("the UNE"), a component of the PSAC, and asked to meet with her. Ms. Dubree met with the complainant on that day, in the Lodge. The complainant conveyed to her information about difficulties she was having with her manager. The evidence of both the complainant and Ms. Dubree was that the complainant conveyed to Ms. Dubree her belief that she felt that she was being bullied and harassed.

[11] Ms. Dubree's evidence was that she was not well-versed in issues such as those the complainant described to her. She testified that she told the complainant that she would bring her concerns to Melody Raabe, the local UNE president and regional vice-president in the DIAND's Winnipeg office. Ms. Dubree testified that within a day or two of meeting with the complainant, she met with Ms. Raabe and that she conveyed to her what the complainant had told her.

[12] Ms. Dubree testified that on April 18, 2013, she met again with the complainant, as well as with the complainant's manager and Sheena Walker from Human Resources (HR). Ms. Dubree's evidence was that the meeting was held to discuss additional IT training for the complainant. There is no evidence that the bullying and harassment allegations were raised at that meeting.

[13] Entered into evidence was a copy of an email dated May 9, 2013, which the complainant's manager sent to her, and a response the complainant drafted but did not send. She referenced it as being evidence that she provided to the PSAC of the bullying and harassment she was receiving at the hands of her manager. At the hearing, Ms. Dubree was not shown a copy of this email to identify. However, she stated that the complainant asked her about an email that the complainant had shown her from her manager and that the complainant had stated she found offensive. Ms. Dubree stated that she was aware that the complainant had drafted a response to

that email, which Ms. Dubree confirmed that she had seen and that she understood the complainant did not send.

[14] The complainant left work and went on certified sick leave on May 14, 2013. She remained on certified sick leave either with or without pay throughout the balance of 2013, all of 2014, and part of 2015. She returned to work on April 8, 2015.

[15] The evidence disclosed that the next contact the complainant had with a member of the UNE or the PSAC was on or about July 15, 2013, when she was at the DIAND's offices and Ms. Raabe noticed her standing by the elevators near Ms. Raabe's workstation. Ms. Raabe described the complainant as being upset when she saw her. Ms. Raabe stated that she and the complainant went into a small boardroom area adjacent to the elevators and that they spoke. She said that the complainant talked to her about her manager's behaviour, which she perceived as bullying and harassing. Ms. Raabe testified that she told the complainant that she needed more information and that she asked the complainant to provide her a timeline and documentation.

[16] The evidence disclosed that either on that same day or on the next day, the complainant began to email to Ms. Raabe's DIAND account a significant amount of documentation and that Ms. Raabe replied and instructed her not to email it to her DIAND account as she could not read it during working hours. She instructed the complainant to print it and to bring it to her. The following are the emails, adduced into evidence, which they exchanged on July 15, 2013:

> [From Ms. Raabe to the complainant, sent at 10:28 a.m.:]
>
> *I don't have time to read all these email here at work.. what i need to know is what if any emails relate to them telling you you had to see a shrink and their Medical doctor from Health Canada. I need that information to draft an email.*
>
> *Can you send it to me and color it red or blue?*
>
> [From the complainant to Ms. Raabe, sent at 11:06 a.m.:]
>
> *I have to leave. I wish I could get a lap top from work to do this at home it would be so much easier … I'll have to come back. Ever so sorry I should have sent them all to the other e-mail address. April 18th is when i met with HR it is still in the appointment calander.*
>
> *I met with [name omitted] February 19th and [name omitted] called me foe a meeting on February 20th.*

> *I have to leave I feel sick.*
>
> [From Ms. Raabe to the complainant, sent at 10:28 a.m.:]
>
> *Its ok Wilmalee,*
>
> *I will draft you an email that you can send to them next time you come back about what they are asking you to do with Health Canada.*
>
> *TAKE CARE OF YOURSELF.*
>
> *Mel*
>
> [*Sic* throughout]

[17] The complainant introduced into evidence a letter she received from HR dated August 13, 2013, with the subject line: "SICK LEAVE WITHOUT PAY – DISABILITY". Its first paragraph states as follows:

> *Your sick leave credits will take you until August 13, 2013 morning and you will start your sick leave without pay (LWOP) effective August 13, 2012. The following information is designed to help you understand your options and responsibilities concerning your benefits and deductions during this period.*

[18] The letter goes on to outline the disability benefits available as well as other options and what would happen with respect to the accumulation of certain benefits and pay-related issues.

[19] In cross-examination, the complainant was shown a copy of an email that was dated July 22, 2013, which Ms. Raabe sent to her, and that stated as follows: "Your Sick Leave Credits will be exhausted on August 13th early morning – they take you til [*sic*] August 12th end of day **and** 1.525 hours on August 13th**"** [emphasis in the original]. The complainant stated that Ms. Raabe had advised her to ask HR when her sick leave credits would run out and that she was given this information. She confirmed that Ms. Raabe advised her in July 2013 to apply for Employment Insurance (EI) sick benefits and to apply for disability insurance (DI) benefits.

[20] The complainant confirmed that she did apply for EI benefits, without the assistance of Ms. Raabe or of anyone else from either the UNE or the PSAC, which she received until sometime in December 2013, when they ran out.

[21] The complainant confirmed that she did apply for DI benefits on August 19, 2013, without the assistance of Ms. Raabe or anyone else from either the UNE or the PSAC. The application was denied, a fact she was advised of by a letter dated October 8, 2013, which the DI insurer sent to her. The letter pointed out to her that despite her file being closed, as part of the appeal process, the DI insurer would be willing to review new records or reports that had not already been reviewed. The letter also warned her that the appeal process was subject to limitation periods set out in the insurance legislation of the province or territory in which she resided.

[22] When the complainant was asked in cross-examination if she ever followed up with the DI insurer after receiving its letter, she stated that she did not. While she confirmed that she and her employer received letters denying her DI application, they were not sent directly to either the UNE or the PSAC. The complainant testified that she did eventually tell Ms. Raabe that she was denied DI benefits; however, she could not recall when that happened. Ms. Raabe testified that she learned of the DI application denial almost a year later in a telephone conversation she had with the complainant on September 26, 2014 ("the September 26 call").

[23] Ms. Raabe stated that in or about July or August 2013, the complainant provided her with a package of material with respect to her belief that she was being harassed and bullied at work, which the complainant confirmed.

[24] Ms. Raabe stated that she reviewed the documentation provided by the complainant and that they met at some point in either July or August 2013. At that meeting, she told the complainant that the documentation was insufficient to support a grievance or harassment complaint. She stated that she told the complainant that she had concerns because some of the documentation disclosed that the complainant had said things in her emails to her manager that could be used against her and that some of the issues that the complainant was raising were old. Ms. Raabe stated that at this meeting, she again asked the complainant to provide her with a timeline.

[25] The complainant testified that no meeting occurred in July or August 2013 in which Ms. Raabe told her that she did not feel there was sufficient information to pursue a grievance or complaint about bullying and harassment; nor was she told to provide a timeline.

[26] A series of notes from the complainant's treating physician were entered into evidence. They disclosed that the complainant was not fit to return to work from May 2013 through October 2014. On October 22, 2013, her family physician stated that she could return to work but not at her substantive position and only at the Lodge. On November 4, 2013, he stated that she should not return to work until November 12, 2013, and that at that time, she should work only three days per week and only at the Lodge. On November 27, 2013, he wrote an extensive medical note to her employer outlining that she had a complex disability that affected her in multiple ways. He stated that she had significant functional limitations. Without setting out the note in detail, he wrote that she had significant functional limitations that constituted a severe disability and that she should not work in her substantive position and even then only in an accommodated position.

[27] The evidence disclosed that throughout fall 2013, up to and including spring 2015, when the complainant eventually returned to work, PSAC representatives took a very active role not only in helping her to return to work but also in securing a position with the DIAND that accommodated her disabilities and protected her salary. While the evidence disclosed that this process was somewhat lengthy, it also disclosed that the complainant's disabilities were complex and that the opportunities were limited. Indeed, when it appeared that she would move to a lower-paying position, a grievance to protect her salary was filed that was eventually referred to the Board for adjudication and that was settled before any hearing took place.

[28] The complainant testified about and introduced documents that disclosed that she sent a number of emails to the PSAC and specifically to Ms. Raabe about her need to return to work, starting in January 2014. Other emails were introduced into evidence that were dated February, April, June, July, August, and September 2014, some of which indicate the complainant's desire to return to work. However, none references any financial hardship until one dated September 23, 2014, which will be fully set out later in this decision.

[29] In cross-examination, counsel for the respondent put to the complainant an email dated Monday, September 22, 2014, and sent at 10:05 a.m. ("the September 22 email") from the complainant to a friend of hers ("Ms. A"). The complainant stated that Ms. A had asked her for some information, so she sent her the September 22 email, which stated as follows:

On May 13th 2013,

I left work due to stress. Prior to that the government of Canada went through what was called work force readjustment. This new imitative meant that some employees were let go some were encouraged to retire etc. I was in a position in the Kiizhigongwigaamik, In the Sky Lodge, teaching Lodge. I was doing very well there and the visits from other government departments and aboriginal organizations were increasing and more people were attending this place. Previously I was advised that I would have to move back to my original position in the regional secretariat, which was regional liaison officer.

…

- *I spoke with someone from my union who I knew and she advised that my boss was bulling me. She requested a meeting with HR and we met to discuss my absence. I had a doctors note advising I would be away from work & my HR people advised I would have to go see someone from health Canada.*

- *One day when I went in to deliver another doctors note. I met the president of the union and she asked why I was away and i told her what had been happening.*

- *She, Melody Rabbe advised that my management did not need to know why I was away and she advised that I needed to discuss more with her.*

- *I told melody what was going on & she advised that she would attend any meetings with me from now on.*

- *We did meet with management and Melody advised that I should go on temporary disability. She told me to apply and I did. My doctors filled out the paperwork and it was sent off to disability. I was still on paid leave at that time.*

- *I was not approved for disability and my paid leave ran out on August 14, 2013.*

- *I was ready to go back to work November 12th 2013.*

- *We met with management on November 12th 2013 and my union rep advised management that i would not be returning due to previous unanswered questions. The question she asked was shy was Wilmalee put on assignment for almost 8 years with no support, and then shoved back into her substantive position without support again.*

…

- *The next meeting was June 25th 2014 and management was unable to provide clear answers to my unions question of why I was put in the Lodge and not given support. They found that things were done wrong and had no explanation as to what happened. I was asked at that meeting what I wanted and I advised that i wanted to work back in the Lodge. Management requested more time was needed as he wanted to provide me with the best possible outcome. They said they would meet again while management was going to the DM and the ADM and would get back to me mid to end of September. I have put in requests to ask for updates and I have been telling them this absence from work is very difficult and is causing me great harm.*

- *It is now nearing the end of September and I have yet to hear from anyone.*

  well that is about it. Let me know what you think

…

[*Sic* throughout]

[30] At the end of the first page of the September 22 email, the following was added by hand:

> [Added near the end, referring to the date of August 14, 2013:]
>
> *What?*
>
> [Added at the bottom of the first page:]
>
> *Why did nothing happen btwn [sic] Nov+ March.*

[31] At the end of the September 22 email (on the second page of the printed version), the following was added by hand:

> *Why did nothing happen btwn Nov + March*
>
> *GRIEVANCE? WHAT IS FILED ON?*
>
> *LABOR BOARD – Broadway*
>
> *Where's pkg? - status*
>
> [*Sic* throughout]

[Emphasis in the original]

[32] The complainant stated that she guessed that the handwriting on the September 22 email is Ms. A's. The complainant testified that as of September 22, 2014, she was discussing her work and bargaining agent issues with Ms. A and that Ms. A told her to ask for a copy of the grievance. Ms. A followed up with the complainant the following day (September 23, 2014) by email at 10:56 a.m., as follows:

> *Hi Wilma Lee [sic]*
>
> *Were you able to get emailed a copy of the grievance from your union?*

[33] On the same day at 2:33 p.m., the complainant emailed Ms. Raabe and Christopher Little-Gagné, another bargaining agent representative ("the September 23 email"), from her online email account on a smartphone. The email stated as follows:

> *Good Afternoon Melody, I would like to inform you that I am very upset at this time. I need to come back to work now. I can no longer support myself and am very desperate financially. I would like to meet with you and management ASAP to discuss my return to work. Understandably friends have questions and concerns about how I'm being represented by my union. No one can understand why I'm still not working. I simply cannot live like this anymore. Please resond [sic] to this email as soon as you can. I have been told to get a labour lawyer to help get my job back. I am very very desperate and this whole process is not doing my health any good at all. Please respond as soon as you can. I need to come back to work now. Wilmalee Pruden*

[34] In cross-examination, the complainant was asked if the September 23 email was sent in context with the email exchange with Ms. A, to which the complainant replied that it was. It was pointed out to her that the email addresses of Ms. Raabe and Mr. Little-Gagné were incorrect in the email. She responded that it could have been that she typed the addresses incorrectly due to stress and that she was having a hard time then, keeping things together.

[35] Ms. Raabe testified that she never received the email entered into evidence as the September 23 email as her email address and Mr. Little-Gagné's were not correct in it. Ms. Raabe was asked if she spoke to the complainant in September 2014, to which she replied that she did, on the September 26 call. She stated that she remembered the

call because it was a difficult conversation and because she had been sitting outside watching movers handle her furniture.

[36] Ms. Raabe stated that during the September 26 call the complainant was very upset and that she blamed Ms. Raabe for everything that had happened to her since she left work on sick leave. She stated that at that time, she learned that the complainant had not been approved for DI and that the appeal period had lapsed. Ms. Raabe testified that the first time she saw the correspondence from the DI insurer was when it was produced at the hearing. She said that had the complainant asked her to assist with the DI application, she would have, and that had the complainant advised her of the denial, she would have helped her file an appeal. Ms. Raabe stated that she told the complainant that despite the denial and lapsed appeal period, she should reapply; she stated that at that point in the September 26 call, the complainant became more agitated and would no longer listen.

[37] Ms. Raabe stated that during the September 26 call, the complainant shouted at her and that in turn, Ms. Raabe was also upset and was curt in her tone with the complainant. She stated that the complainant said the following to her: "You were supposed to file a grievance and you didn't; you were supposed to file a complaint and you didn't; you were supposed to help me, and you didn't; you are the reason I am losing my house; I have no money; I have no job." Ms. Raabe said she tried to calm the complainant down but that the complainant hung up.

[38] Entered into evidence was an email the complainant sent to Mr. Little-Gagné, with a copy to Ms. Raabe, dated September 26, 2014, at 2:00 p.m., which forwarded the September 23 email, with the following introduction: "See email below which was previously sent. I have so many concerns. Please reply ASAP in regards to meeting with management."

[39] The complainant testified that she resent the September 23 email because she had not received a response to it. She admitted in cross-examination that she made the September 26 call because she wanted to discuss the issues that she had been discussing with Ms. A. When it was put to her that she discussed the issues of her grievance and harassment complaint with Ms. Raabe in the September 26 call, she denied it. She stated that Ms. Raabe yelled at her immediately because many people from Ottawa, Ontario, were calling her. The complainant then stated that she told Ms.

Raabe that Ms. Raabe "could have put the grievance in". She then stated that Ms. Raabe replied: "No, we missed the deadline; I am trying to help youse people." The complainant stated that Ms. Raabe then said: "You better not get me mad." The complainant said that at that point, she hung up and never spoke to her again.

[40] The complainant testified that she was offended by the way that Ms. Raabe spoke to her on that day, which is why she hung up. Immediately after the complainant's rendition of what happened during the September 26 call, counsel for the PSAC stated to her that she wanted to confirm that she did discuss filing a grievance with Ms. Raabe. The complainant replied that she could not specifically recall doing so. When it was put to her that at that point, she had not yet called anyone in Ottawa, she stated that she called Ottawa in December 2014. Counsel for the PSAC then suggested that perhaps a different call took place with Ms. Raabe, to which the complainant stated that she knew that she had called Ottawa and that maybe she had the dates mixed up. The complainant then stated that all she recalled was that Ms. Raabe had been angry. Counsel for the PSAC then suggested that perhaps the complainant's recollection of the calls from Ottawa was never discussed in September 2014 with Ms. Raabe, to which the complainant agreed that maybe that was so and that maybe she had the dates wrong.

[41] Counsel for the PSAC then suggested to the complainant that she made the September 26 call. The complainant stated that she recalled talking to Ms. Raabe on that date. Counsel suggested to the complainant that Ms. Raabe would testify that after that call, she had no further calls with the complainant, to which the complainant reiterated that that call ended their relationship, once Ms. Raabe yelled at her.

[42] Counsel for the PSAC then suggested to the complainant that she had no specific recollection of what was discussed on the September 26 call, to which the complainant responded that she did not recall the conversation. Counsel then told the complainant that Ms. Raabe would testify that when they spoke on that call, it was confirmed that no grievance was filed. The complainant replied that she did not recall.

[43] Counsel for the PSAC then suggested to the complainant that Ms. Raabe would state that the complainant told her during the call that the complainant had been rejected for DI. The complainant answered that that had been during a face-to-face conversation. Counsel then suggested to her that Ms. Raabe would testify that she also

told the complainant during the call that the complainant should reapply for DI benefits. The complainant replied that she recalled that that was also a face-to-face conversation.

[44] On September 29, 2014, the complainant responded to an email from Ms. Raabe, which in the email chain does not disclose the date and time on which Ms. Raabe emailed the complainant. The email chain is as follows:

> [From the complainant to Ms. Raabe, sent at 5:27 p.m.:]
>
> *Melody, I will come to the office at noon tomorrow. Will you be able to photo copy my disability forms for me? I also need to call the pay people about the pension. I left a message for you as well. Thanks.*
>
> *Wilmalee*
>
> [From Ms. Raabe to the complainant, sent before her 5:27 p.m. email:]
>
> *Chris forwarded me your frantic message as I did not receive this email. I am sorry for your frustration, but I cannot control the timeline for the RDGs office, nor is there anything in our collective agreement that give us the ability to force the employer into a specific timeframe for a response.*
>
> *What we asked for you is not something that is done very quickly as there is a lot of protocol that John D. Will have to attempt to bypass. Keep in mind that the job you were in for 8 years is now obsolete and we asked to have it essentially "restored". I also came into this situation half way through and did my best to go forward working from the point I came into the picture. Decisions were made prior to my intervention that impacted what I had the ability to do going forward.*
>
> *Further to our telephone conversation on Friday I have also not ever received your information on DI. As I have the expertise and your representative of record I am the one that should be reviewing this information on your behalf and not your friends as they are not also looking at all the treasury board policies and directives surrounding your DI claim as it is not a stand alone document nor should it be viewed as such.*
>
> *To date I have done everything to assist you. That said should you wish to hire a labour law lawyer as you mentioned in your email, you have the ability to do so. If that is what you decide, you would have to advise the union, in writing, that you are now choosing to represent yourself.*

> *Please let me know if you would like me to continue as your representative.*
>
> …
>
> [*Sic* throughout]

[45] On September 30, 2014, at 7:22 a.m., Ms. Raabe emailed the complainant in part as follows:

> …
>
> *After we talked Friday I was expecting you yesterday and cleared my lunch hour to assist. I am training every day this week and today at lunch I am prepping for my session at noon so I have not [sic] time today sorry. I can clear my lunch hour for you tomorrow, Wed Oct 1 noon to 1 to help you.*
>
> …

[46] On October 1, 2014, at 4:00 p.m., the complainant emailed Ms. Raabe in part as follows:

> *I wanted to let you know that I really need to get back to work ASAP. I am really having a hard time both finically and emotionally. I guess I should have paid more attention or asked more questions before I went on sick leave. I just cannot believe I am in this position. I have worked steady since I was 16 years old. I went through very hard times my whole life. For some reason I thought you knew I was unable to get disability. I also thought you knew I was not able to get any EI payments. In fact Ive been in a cloud I guess. Ive had no money coming in my house since August 2012. I am very close to losing my home. I cannot afford hydro soon and my phones been cut off. I used to have good credit, but now I have none. I am stressed out and scared. I have worked for aandc for 16 years & have gone through so much negativity. I always did the best I could for management. I went on sick leave on the advice of my union at the star of all this but would never have agreeed to if I knew I would be out of work this long. Please see if there are any alternatives. I worked my whole life and have never been this desperate. Please email me back as soon as you can..*
>
> …
>
> [*Sic* throughout]

[47] On October 2, 2014, at 7:22 a.m., Ms. Raabe replied as follows, in part:

> *I cannot send this email as written. The UNION never advised you to go on sick leave. That would be terms for termination if you went on sick leave to "hurt" the employer and you would be deemed to be in a position of illegal strike action. My intervention came after you were off on sick leave for over a year. You went on sick leave because your doctor deemed you unfit to work at that time for reasons outlined in the letter from Sunlife as explained by your treating physician.*
>
> *That said I will send an email on your behalf expressing your desperation.*
>
> …

[48] The complainant was brought to a medical note signed by her family physician and dated October 6, 2014, which stated that the complainant was fit to return to work and that she could work regular duties. She stated that she was told to give this note to Ms. Raabe but that when she tried to, Ms. Raabe was not there. So she gave it to Ms. Walker.

[49] On October 10, 2014, the complainant and Ms. Raabe exchanged a number of emails after Ms. Raabe received a copy of an email Ms. Walker had sent to the complainant. The first email exchange, including Ms. Walker's email, is as follows:

> [From Ms. Walker to the complainant, with a copy to Ms. Raabe, sent at 10:47 a.m.:]
>
> …
>
> *The purpose of this email is to confirm receipt of the letter that was dropped off, addressed to me, earlier this week. I received the letter yesterday, October 9, 2014.*
>
> *I would like to confirm if your union representatives, Melody Raabe and Cheryl Dubree, have also received a copy of this letter. If not, I would like to request your permission to provide them with a copy of this letter. If Melody and Cheryl are no longer representing you, please let me know.*
>
> …
>
> [From Ms. Raabe to the complainant; no time is indicated:]
>
> *Wilma lee!! What did you submit?? I specifically advised you*

> *to show me FIRST what your doctor gave you. I hope it was written correctly and there are no implications going forward. I dont know what else I can say to make you believe I am doing everything possible to help you.*
>
> *You need to listen to me. I HAVE YOUR BEST INTERESTS in mind when I do anything for you. If you want to self-represent than you need to tell me in writing, otherwise please listen to me and do not do anything on your own that could undermine my efforts on your behalf.*
>
> *Please send me a copy ASAP*
>
> [From the complainant to Ms. Raabe, sent at 1:32 p.m.:]
>
> *Hi Melody, sorry I was trying to get this done asap. The note is just a regular note saying I can teturn to work. A very simple one. It took me the whole day to bus it out there and i only had enough bus fare for one way as my transfer ran out. I had to walk very far. I too am trying my bet. Cheryl was not in either. You were in Ottawa. So I just left it with her. She can send you a copy. Im so sorry how would i have gotten it to you? You said to get it to her asap.*
>
> …
>
> [*Sic* throughout]

[50] The second email exchange that took place on October 10, 2014, also occurred after the email that Ms. Walker sent to the complainant confirming her receipt of the medical note from the complainant's family physician dated October 6, 2014. However, the chain after the initial email was different, as follows:

> [From the complainant to Ms. Walker, sent at 1:23 p.m.:]
>
> *Hi Sheena, is my security clearance still active*
>
> …
>
> [From Ms. Raabe to the complainant; no time is indicated:]
>
> *Please advise if you are now self-representing and I will close your file.*
>
> …
>
> [From the complainant to Ms. Raabe, sent at 1:37 p.m.:]
>
> *I have paid union dues for 15 years and I think I deserve to be represented. Please do not close my file as I need help. I do*

> *not understand the policies. You asked me to get the doctors note to Sheena asap and I did. Sorry*
>
> …
>
> [From Ms. Raabe to the complainant; no time is indicated:]
>
> *Its ok, but please going forward to NOT address Sheena directly. Go through me or Cheryl !!*
>
> *Send me the note I need to read.*
>
> …
>
> [From the complainant to Ms. Raabe, sent at 1:52 p.m.:]
>
> *Melody, I have to find $$ to pay my cell phone which is due oct 23rd. If I cant find money my phone will be disconnected. Then we will have to write letters. That wont be fun. I have been very depressed by my situation. I always thought a grievance was put in. I also thought I would be compensated for my time off. I never knew it would be like this… cant you understand?*
>
> …
>
> [*Sic* throughout]

[51] In cross-examination, it was put to the complainant that based on the email she sent on October 10, 2014, to Ms. Raabe, she knew at least as of that point that no grievance about the alleged bullying by her manager had ever been submitted, to which she agreed.

[52] Late in the day on October 10, 2014, Ms. Walker sent Ms. Raabe and Ms. Dubree a copy of the October 6 medical note. On Saturday, October 11, 2014, at 9:34 a.m., Ms. Raabe emailed the complainant, as follows:

> *We have a problem. The letter was supposed to say you can return to work EXCEPT in the environment of which started your illness – in* [name omitted] *shop.*
>
> *I have to try and speak to Sheena to see if I can rescind that note for another one. Unless you are prepared to resume your duties with* [name omitted]*?*
>
> *Let me know asap so I can figure out what to do next.*

[53] In cross-examination, it was put to the complainant that Ms. Raabe had told her to provide her with the medical note first. The complainant replied, mentioning that she had lacked money, that she had only enough money for one-way bus fare, that she did not have enough money to see the doctor, that her bus fare had run out, that Ms. Raabe had left 20 minutes before the complainant arrived at her office, and that Ms. Dubree was also not there. The complainant was brought to an email that Ms. Raabe had sent to her on October 3, 2014, at 7:41 a.m., which stated in part as follows:

…

> *I will be sending you a detailed outline of what your options will be once you are cleared to return to work. Right now you need to go to the doctor and have him provide you with a medical certificate (possibly letter style) outlining the fact that you can return to work without restriction. The latter is very very important. Make the appointment asap and once you have that certificated you need to give Cheryl a copy and have her give it to Sheena right away. If you can get this in to Sheena by Wed next week latest would really be helpful.*
>
> *Then today sometime also send an email to Sheena (copying Cheryl and I) that you agree to having a Health Canada assessment with the Employer and she will set that up asap as well but I don't think she can do this until your doctors note is submitted to her.*
>
> *This is so important because if you select as one of your options to change your lwop from sick to personal you can take the job at Parks Canada (dual employment) while they figure out where to place you.*
>
> …
>
> *We will talk early next week via email and I can call you from Ottawa so it doesn't cost you anything but Cheryl knows this is a priority.*
>
> …
>
> [*Sic* throughout]

[54] When that email was put to the complainant in cross-examination, she said that she probably did read it (it stated that Ms. Raabe would be out of town and in Ottawa) but that she probably had forgotten because of stress.

[55] I heard evidence from the complainant, Ms. Raabe, and Raymond Brassard, another PSAC representative who eventually took over the complainant's file from Ms. Raabe and continued to represent the complainant in her difficulties with the employer with returning to work and with being accommodated. That evidence disclosed that a great deal of work was done to eventually return the complainant to work in Winnipeg, albeit in a different capacity with the DIAND, with a salary that was acceptable to her. Given that none of that evidence has any bearing on the complaint or on the PSAC's position that it is untimely, I will not go through it in any detail.

[56] In the end, the complainant did return to work in April 2015 in a CR-04-classified position at the DIAND, and she filed a grievance with the PSAC's assistance. And with the assistance of the PSAC and Mr. Brassard, she filed a grievance about the salary at that level, which was pursued to adjudication before the Board. However, it was settled without proceeding to a hearing.

III. Summary of the arguments

A. For the complainant

[57] The complainant submitted that she was taught the "Seven Sacred Teachings" from birth, one of which is truth.

[58] She submitted that she has had her struggles, that she worked hard to make it to the AS-02 level, and that going back to a CR-04 position was difficult for her. She said that going through the difficult financial issues hurt her and her parents, who supported her financially through that period.

[59] She submitted that she went through many struggles while at the DIAND; she was ill during the period at issue (2013 to 2015), and she assumed that the UNE and the PSAC were taking care of her.

[60] She stated that she did submit a grievance.

[61] The complainant stated that she believed that Ms. Raabe was busy with her personal life and that she forgot about her. The complainant said that she should not have had to go through such desperate times and that she believes that the respondent should have to follow its values.

[62] The complainant stated that she is angry. However, she stated that after the hearing, she would let everything go and move forward with her life. She stated that the two years at issue (2013 to 2015) damaged her and that she is still struggling.

[63] The complainant referred me to *Sutcliffe Heinrichs v. Canadian Union of Postal Workers and Canada Post Corporation*, 2016 CIRB 819, which she submitted stands for the proposition that a lack of communication by a bargaining agent with one of its members is a violation of the duty of fair representation.

[64] The complainant also referred me to *Misuga v. CUPE Local 2153 and Winnipeg Child and Family Services*, Case No (2014) 298/12/LRA, which quotes, from *V.S. v. Manitoba Human Rights Commission and Manitoba Government and General Employees' Union* (2010), 190 C.L.R.B.R. (2d) 184, part of paragraph 107 of the Supreme Court of Canada's analysis of bad faith, discrimination, and arbitrariness in *Noël v. Société d'énergie de la Baie James*, [2001] 2 S.C.R. 207, as follows:

…

> *Referring to G. W. Adams,* Canadian Labour Law *(2nd ed.) (loose-leaf), the Court noted that the prohibition against acting in an arbitrary manner means that:*
>
> > *… even where there is no intent to harm, the union may not process an employee's complaint in a superficial or careless manner. It must investigate the complaint, review the relevant facts or seek whatever advice may be necessary; however, the employee is not entitled to the most thorough investigation possible. The association's resources, as well as the interests of the unit as a whole, should also be taken into account. The association thus has considerable discretion as to the type and extent of the efforts it will undertake in a specific case.*

…

[65] In citing *Misuga*, the complainant submitted that she was entitled to the best representation.

[66] The complainant referred me to the first paragraph of *Sapra v. Association of Postal Officials of Canada and Canada Post Corporation*, 2010 CIRB 533, where it references a bargaining agent acting arbitrarily by withdrawing a grievance.

[67] The complainant also referred me to Snyder, *The 2015 Annotated Canada Labour Code*, Division III - Acquisition, Termination of Bargaining Rights, referencing s. 37 of the *Canada Labour Code* (R.S.C., 1985, c. L-2) and the duty of fair representation. At pages 433 and 442, it states as follows:

> ***Serious Negligence***
>
> *… the Board believes that unions must still achieve a certain level of competence in order to avoid reckless or seriously negligent behaviour: Resel (1994), 95 di 120 (Can. L.R.B.) (union, in its interpretation of collective agreement time-limit provisions, seriously negligent in not filing grievances in timely manner).*
>
> ***Lack of Communication With Grievor***
>
> *Extreme care should be taken by a union to ensure that the grievor is fully aware of any decision affecting his or her rights so that all avenues of redress can be pursued if desired: Gervais (1983), 53 di 104 (Can. L.R.B.) (manner in which grievor was informed that grievance not to be process [sic] further was deplorable).*
>
> [Emphasis in the original]

[68] The complainant submitted that the bargaining agent's failure to file a grievance or harassment complaint on her behalf amounted to serious negligence and that she was given no indication as to what the bargaining agent was considering with respect to her grievance and harassment complaint.

[69] The complainant requested that she be awarded damages in an amount equal to the salary she lost from the point her EI benefits ended in December 2013 until she returned to work in April 2015.

B. For the respondent

[70] The burden of proof was on the complainant. The respondent's position was that she failed to discharge that burden and that the complaint should be dismissed.

1. The complaint is out of time

[71] Section 190(2) of the *Act* sets a mandatory 90-day time limit for a complainant to file a complaint under s. 190(1), which begins to run from the date on which the complainant knew or ought to have known of the circumstances giving rise to

the complaint.

[72] The complaint was filed on January 19, 2015. The central issue it raised was that the respondent failed to satisfy its duty of fair representation with respect to the complainant by failing to file either a grievance or harassment complaint on her behalf about bullying behaviour she alleged a manager directed towards her, which she brought to her bargaining agent representative in April 2013.

[73] Ms. Raabe testified that in or about July or August 2013, she told the complainant that such a grievance or harassment complaint would not be successful. Based on this evidence, the 90-day time limit for filing would have expired in November 2013, well over a year before the complaint was actually filed.

[74] Ms. Raabe also testified that she and the complainant had the September 26 call, during which it again was clear that the complainant knew that no grievance or harassment complaint had been advanced by the respondent on her behalf with respect to her concerns about alleged bullying behaviour by a manager.

[75] Ms. Raabe remembers the September 26 call because she was away from work on leave, she was moving, and the call took place while she was outside her home supervising movers handling her furniture. In addition, the complainant had written the September 22 email to her friend referencing her concerns, and the friend had told her to obtain a copy of the grievance. On September 23, 2014, the complainant and that same friend exchanged emails again, in which her friend followed up on the grievance. Those emails occurred just before the September 26 call. If I accept that the grievance or harassment complaint was raised in the September 26 call, then the 90-day time limit set out in s. 190(2) of the *Act* for filing this complaint would have expired on December 26, 2014.

[76] On October 10, 2014, the complainant emailed Ms. Raabe. She specifically stated in it that she always thought a grievance had been filed. Since she wrote it, she would have known on that date that no grievance or harassment complaint had been filed and that the 90-day time limit set out in s. 190(2) of the *Act* would have started running on that date and would have expired on January 8, 2015.

[77] The complainant stated that she had a conversation with Ms. Raabe on October 22, 2014, and that at that time, the failure to file a grievance or harassment

complaint was discussed. While the respondent specifically denied that that discussion took place, even if it did, this is not the date on which the complainant knew or ought to have known of the failure to file a grievance or a harassment complaint. At the very latest, by her own evidence, being the October 10, 2014, email, she knew that no grievance or harassment complaint had been filed. Confirming that fact on October 22, 2014, did not somehow extend or refresh the 90-day time limit.

[78] The respondent referred me to *Esam v. Public Service Alliance of Canada (Union of National Employees)* 2014 PSLRB 90, *Ethier v. Correctional Service of Canada and Union of Canadian Correctional Officers – Syndicat des Agents Correctionnels du Canada* – CSN 2010 PSLRB 7, *Tran v. Professional Institute of the Public Service of Canada* 2014 PSLRB 71 and *Boshra v. Canadian Association of Professional Employees* 2009 PSLRB 100.

2. The merits of the complaint

[79] The jurisprudence of the Board and its predecessors is well established with respect to the requirements to establish a breach of the duty of fair representation under s. 187 of the *Act*.

[80] The complainant did not suggest in her complaint or at the hearing that the basis of her complaint relates to allegations of discrimination or bad faith; instead, it is that the respondent acted arbitrarily.

[81] The respondent submitted that there was absolutely no evidence to suggest that it acted in an arbitrary manner.

[82] The PSAC referred me to *Ouellet v. Luce St-Georges and Public Service Alliance of Canada*, 2009 PSLRB 107 at para. 30. It stated that the role of the Public Service Labour Relations Board (PSLRB) was not to examine on appeal a bargaining agent's decision of whether to file a grievance or to refer it to adjudication but rather to evaluate how it handled the grievance. The PSLRB was to rule on the process and not on the merits of the grievance or complaint.

[83] *Bahniuk v. Public Service Alliance of Canada*, 2007 PSLRB 13 at para. 51, states that a union cannot act arbitrarily by disregarding the interests of an employee in a perfunctory manner. Rather, a union "… must take a reasonable view of the problem before it and arrive at a thoughtful judgment about what to do after considering the

various relevant and conflicting considerations." At paragraph 52, the adjudicator quotes *Judd v. Communications, Energy and Paperworkers Union of Canada, Local 2000* (2003), 91 CLRBR (2d) 33 at para. 42, as follows:

> … *When a union acts based on considerations that are relevant to the workplace, or to its job of representing employees, it is free to decide what is the best course of action and such a decision will not amount to a violation of* [the duty of fair representation].

[84] The PSAC also referred me to the comments found at paragraphs 62 through 65 of *Bahniuk*, stating that communications between a bargaining agent and a member may be emotionally charged, especially when conveying to a member information he or she does not want to hear, but that does not equate to a breach of the duty of fair representation.

[85] The PSAC referred me to *Cox v. Vezina*, 2007 PSLRB 100, in which the PSLRB held that it would not normally inquire into whether a decision a bargaining agent made when representing an employee was correct. It would examine the process by which the bargaining agent made its decision as well as its conduct along the way, according the bargaining agent considerable latitude throughout. Paragraph 128 of *Cox* states that a complainant's perception of a shortfall does not establish arbitrariness or bad faith in a respondent's efforts.

[86] Finally, the PSAC referred me to *Archambault v. Public Service Alliance of Canada*, 2003 PSSRB 56, which stands for the proposition that a bargaining agent has a great deal of latitude when acting on behalf of an employee and that the standard required to show a breach of the duty of fair representation is extremely high.

[87] The evidence disclosed that the complainant approached a representative of the respondent in April 2013 about her concerns with a manager's behaviour, which she felt amounted to bullying. The respondent's representative, Ms. Dubree, said that she was not able to help, and she spoke to Ms. Raabe. They discussed the next steps. The complainant was on certified sick leave at that time.

[88] The next time the complainant met with a representative of the respondent was when she met with Ms. Raabe in mid-July 2013. The evidence disclosed that Ms. Raabe asked the complainant for more information, documents, and a timeline. Ms. Raabe also advised her to apply for EI and DI benefits as the complainant's paid sick-leave

benefits were going to run out in August 2013.

[89] Ms. Raabe's evidence was that she reviewed the material that the complainant submitted to her, that she concluded that a grievance or complaint would not be successful, and that there was a possibility that if one were filed, it could backfire on the complainant, given some of the documentation. Ms. Raabe had also stated that some of the facts that the complainant was relying upon were old and could not support a grievance or harassment complaint.

[90] Ms. Raabe's evidence was that she would review any further documentation that the complainant provided to her and that she asked the complainant for a timeline, which was never provided to her.

[91] Ms. Raabe also testified that had she reviewed the material the complainant provided to her in May 2013 as opposed to in August, her opinion as to the potential success of a grievance or harassment complaint would not have been different.

[92] The evidence disclosed that the complainant did apply for EI benefits and that she did receive them until sometime in December 2013. It also disclosed that she did apply for DI benefits and that the insurer denied her application in October 2013; a fact that Ms. Raabe testified she was not made aware of until almost one year later, in September 2014. Her evidence was that she believed that the complainant was receiving some form of income replacement up to September 2014, despite being off work.

[93] The complainant chose not to appeal the denial of her DI application; nor did she reapply. In her evidence, she stated she did not because of stress and because of her own assessment, which was that she would be able to get by with her rental income.

[94] While the complainant made very substantial submissions about her financial hardship, at the time in question, she never provided the respondent the opportunity to assist her because she never informed it about her hardship.

[95] *Velichka v. Sears Canada Inc.*, 2015 HRTO 625 stands for the proposition that a bargaining agent's failure to help secure DI cannot support a finding of a breach of the duty of fair representation because DI is not covered by a collective agreement. The remedy for such a denial is a civil lawsuit as against the insurer.

[96] Ms. Raabe testified as to what she did on behalf of the complainant from summer 2013 onward. The focus of the complainant's issues shifted from a grievance

or harassment complaint based on a manager's alleged bullying to returning to work, specifically at the Lodge. It also became the respondent's focus. The evidence disclosed that Ms. Raabe did what she could to accomplish the complainant's stated goal, which was to return to a job at the Lodge.

[97] The evidence disclosed that there were delays returning the complainant to work at the Lodge. However, they were not due to the respondent's actions but to the complainant's family physician had placed her ability to return to work. Those restrictions, specifically not returning to work in her substantive AS-02 position, did not relate to any issues with respect to alleged bullying by her manager but to issues relating to her cognitive and functional limitations with work tasks. These problems included difficulties with processing material, memory, and meeting deadlines.

[98] During the September 26 call, Ms. Raabe learned that DI was denied or the complainant, and she still tried to help her. The complainant hung up on her, yet Ms. Raabe still followed up with her after that call via email. Ms. Raabe's involvement ended in November 2014, when Mr. Brassard became involved.

[99] At the end of the day, the PSAC did not move forward with the complainant's grievance or harassment complaint because it had carried out an assessment of the issue and had determined that it was unlikely to succeed.

[100] With respect to the complainant's submitted case law, *Sapra* deals with situations of a lack of communication, which does not exist in this case. In *Sapra*, the bargaining agent did not seek any facts, which is completely different from this case. In this case, arbitrary would have been to accept the employer's version of events and to disregard the complainant's, which did not happen. In fact, the PSAC never heard the employer's version; it heard only the complainant's version. *Cox* is helpful. At paragraphs 142 and 143, it holds that it is legitimate for a bargaining agent to insist on factual evidence and documentation from an employee before proceeding to file a complaint or grievance.

[101] With respect to the issue of credibility, the PSAC referred me to *Faryna v. Chorny*, [1952] 2 D.L.R. 354. The complainant's evidence was not necessarily

consistent throughout or in line with the documents. It was often unclear; she could not recall dates and mixed and at times conflated conversations. She did not have an independent recollection of events; her evidence often changed and was sometimes inconsistent with other evidence that she had given or with her documentation.

[102] Ms. Raabe's evidence was clear and consistent with the documentation that existed at the time of the events. She could recall events with some detail, along with supporting facts to corroborate them. The PSAC submitted that when there is a difference in the facts, those of Ms. Raabe should be accepted over those of the complainant.

IV. Reasons

[103] For the reasons that follow, I find that the complaint was not filed within the time limit set out in s. 190(2) of the *Act*. As such, it is dismissed. Given this finding, I shall not address the complaint on its merits.

[104] The time limit in which to file a complaint under s. 190 of the *Act* is set out in s. 190(2) as follows:

> ***Time for making complaint***
>
> ***190 (2)*** *Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 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.*

[105] As set out in *Esam v. Public Service Alliance of Canada (Union of National Employees)* 2014 PSLRB 90, at para. 32, the time limit set out in s. 190(2) of the *Act* is mandatory, and there is no discretion for it to be extended, which has been noted consistently in the jurisprudence of the Board's predecessors (see also *Ethier v. Correctional Service of Canada and Union of Canadian Correctional Officers – Syndicat des Agents Correctionnels du Canada – CSN* 2010 PSLRB 7, *Tran v. Professional Institute of the Public Service of Canada* 2014 PSLRB 71 and *Boshra v. Canadian Association of Professional Employees* 2009 PSLRB 100.).

[106] The evidence disclosed that the complainant sent the September 22 email. It was a little more than a page long, and it set out a number of different concerns, including some she had with respect to the bullying and harassment she felt she had

suffered at the hands of her manager. She stated as follows:

> - *My manage kept telling me I had to learn fast and I had to be just like* [name omitted]*, who was the head of executive services and a few levels above me. I was an AS02 and she was a PM 04. My boss now was sending me emails to tell me I was a few minutes late and how I had to hurry to learn this job I had been away from for almost 8 years.*
>
> - *I spoke with someone from my union who I knew and she advised that my boss was bulling me. She requested a meeting with HR and we met to discuss my absence. I had a doctors note advising I would be away from work & my HR people advised I would have to go see someone from health Canada.*
>
> - *On day when I went in to deliver another doctors note. I met the president of the union and she asked why I was away and i told her what had been happening.*
>
> - *She, Melody Rabbe advised that my management did not need to know why I was away and she advised that I needed to discuss more with her.*
>
> …
>
> [*Sic* throughout]

[107] The September 22, email had the following notes made on it, which the complainant identified as being in the handwriting of her friend, Ms. A:

> *Why did nothing happen btwn Nov + March*
>
> *GRIEVANCE? WHAT IS FILED ON?*
>
> *LABOR BOARD – Broadway*
>
> *Where's pkg? - status*
>
> [*Sic* throughout]
>
> [Emphasis in the original]

[108] The next day, Ms. A emailed the complainant at 10:56 a.m., as follows:

> *Hi Wilma Lee*
>
> *Were you able to get emailed a copy of the grievance from your union?*

[109] The evidence disclosed that after that exchange, the September 26 call occurred. The evidence on it is conflicting and contradictory.

[110] The complainant also entered into evidence the September 23 email. It referenced discussions she had had with Ms. A about her representation by the respondent. A copy of it was also included in a later email chain involving Ms. Raabe and Mr. Little-Gagné, which discloses that that email had errors in the email addresses for Ms. Raabe and Mr. Little-Gagné.

[111] Ms. Raabe stated that she recalled the September 26 call vividly as she was in the process of moving and was outside watching movers handling her furniture while she spoke with the complainant.

[112] Ms. Raabe stated that on that call, the complainant was very upset and that she blamed Ms. Raabe for everything that had happened to her since she had left on sick leave. This was when Ms. Raabe stated that she learned that the complainant had not been accepted for DI. Ms. Raabe stated that the complainant shouted at her and stated that she was supposed to have filed a grievance and that she had not filed one, that she was supposed to file a complaint and that she had not filed one, and that she was supposed to have helped her but had not. The complainant stated to Ms. Raabe that the reason she had no money and no job and was losing her house, was Ms. Raabe. Ms. Raabe said that she tried to calm the complainant down, which was to no avail as she had hung up.

[113] When counsel for the respondent put to the complainant that she made the September 26 call, the complainant agreed with her, stating: "I remember that." Counsel then asked her to agree that that discussion was about issues that the complainant had raised with her friend in the September 22 and 23 emails, to which the complainant agreed. When counsel for the respondent then suggested to the complainant that during the call, she discussed with Ms. Raabe the status of her grievance, she denied it. The complainant then went on to state a number of things, including as follows:

> *She yelled at me right away. She was angry because all these people were calling her from Ottawa. I said you could have put the grievance in. She said no- we missed the deadline.*
>
> …

I then hung up on her and never spoke to her again.

[114] After making that statement in response to counsel for the respondent's question about the grievance, and when asked to confirm that therefore she did in fact discuss filing a grievance at that time, the complainant changed her testimony and stated that she did not.

[115] The complainant went on in her evidence to suggest that perhaps Ms. Raabe had yelled at her during a different conversation. She then stated that the discussion that ended their relationship finished when Ms. Raabe yelled at her.

[116] Counsel for the respondent then suggested to the complainant that she had no specific recollection of what was discussed during the September 26 call, to which she agreed.

[117] The complainant agreed that the September 26 call took place. She initially denied that any discussion of her grievance ever took place. However, she then stated specifically that in fact she said to Ms. Raabe that Ms. Raabe could have filed a grievance, and then she hung up and never spoke to Ms. Raabe again. Moments later in her evidence, she denied discussing the grievance and stated that perhaps she had mixed up her calls. Finally, she stated that she had no specific recollection of that telephone conversation.

[118] Based on the complainant's emails with her friend on September 22 and 23 emails, issues relating to her situation, including the grievance, were on the complainant's mind and by her own admission were the subject of the September 26 call. While she initially denied discussing the grievance, during the course of her answer, she stated that she did mention to Ms. Raabe that Ms. Raabe could have filed a grievance. She later stated that she did not discuss the grievance. Later still, after explaining that perhaps she was mistaking the September 26 call for another one, she stated that she had no specific recollection of it.

[119] Ms. Raabe's recollection of the September 26 call was that the complainant was upset and that she blamed Ms. Raabe for all her employment and financial woes, which included an accusation that Ms. Raabe had not filed a grievance.

[120] Given all the evidence, I accept that the issue of the failure to file a grievance was raised during the September 26 call and that the complainant knew then that no

grievance or complaint about bullying had been filed. Knowing this, she should have filed her complaint within 90 days of September 26, 2014. The deadline to do that would have been on or about the first business day after Boxing Day (December 26) 2014. As she filed her complaint on January 20, 2015, she did so well outside the 90-day deadline.

A. The October 10, 2014, email

[121] If I am incorrect in my assessment of what occurred on September 26, 2014, it is clear that on Friday, October 10, 2014, at 1:52 p.m., the complainant emailed Ms. Raabe, stating: "I have been very depressed by my situation. I always thought a grievance was put in." This email confirms without a doubt that as of October 10, 2014, the complainant knew that no grievance had been filed, which she states in her email.

[122] Therefore, the 90-day period set out in s. 190(2) of the *Act* expired on Thursday, January 8, 2015. As she filed her complaint on January 20, 2015, it was done outside the mandatory time limit.

B. The alleged October 22, 2014, meeting

[123] In her evidence, the complainant suggested that she discussed the respondent's failure to file a grievance at a meeting on October 22, 2014. Again in her evidence, she stated that she met with Ms. Raabe on that day, but Ms. Raabe stated that no meeting took place. Without ruling on whether a meeting took place, and assuming that one did take place and that the grievance was discussed, then that discussion could not and does not act as an event that the complainant could use to extend the time to file her complaint.

[124] As set out as follows at paragraph 47 of *Boshra*, the Board does not have the option of taking the complainant's efforts to work with the respondent on her case into consideration: "Subsection 190(2) of the Act requires timely filing even where efforts continue to resolve a problem amicably."

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

(The Order appears on the next page)

V. Order

[126] The complaint is untimely.

[127] The complaint is dismissed.

March 9, 2017.

John G. Jaworski,
a panel of the Public Service Labour Relations and Employment Board