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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

ROBERT BEAULIEU

Complainant

and

ROYAL CANADIAN MOUNTED POLICE

Respondent

Indexed as
Beaulieu v. Royal Canadian Mounted Police

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

Before: Stephan J. Bertrand, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Geneviève Ruel, counsel

Heard at Montreal, Quebec,
June 22 and 23, 2017.
(FPSLREB Translation)

I. Complaint before the Board

[1] Robert Beaulieu ("the complainant") filed a complaint against the Royal Canadian Mounted Police ("the RCMP" or "the respondent"). The complaint is dated August 5, 2016, but it was received and stamped by the Public Service Labour Relations and Employment Board ("the Board") on August 15, 2016.

[2] On August 18, 2016, the Board found that the complaint did not contain sufficient information to establish its nature, and it asked the complainant to provide additional information, which he did, on October 26, 2016.

[3] The complaint was filed under s. 190(1)(g) of the *Public Service Labour Relations Act* (*PSLRA*), 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.*

[4] Section 185 of the *PSLRA* defines an unfair labour practice as anything prohibited by ss. 186(1) or (2), 187, 188, or 189(1). The provision referred to in s. 185 that applies to this complaint is s. 186. According to the complainant, the respondent violated s. 186(1)(b) as well as ss. 186(2)(a)(i) and (2)(c)(i), (ii), and (iii), which provide for the following:

> ***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*
>
> …
>
> ***(b)*** *discriminate against an employee organization.*
>
> ***(2)*** *Neither the employer nor a person acting on behalf of the employer, nor a person who occupies a managerial or confidential position, whether or not that person is acting on behalf of the employer, shall*
>
> ***(a)*** *refuse to employ or to continue to employ, or suspend, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise*

> *discipline any person, because the person*
>
> > ***(i)*** *is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,*
> >
> > …
> >
> > ***(c)*** *seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from*
> >
> > > ***(i)*** *testifying or otherwise participating in a proceeding under this Part or Part 2,*
> > >
> > > ***(ii)*** *making a disclosure that the person may be required to make in a proceeding under this Part or Part 2, or,*
> > >
> > > ***(iii)*** *making an application or filing a complaint under this Part or presenting a grievance under Part 2.*

[5] In its written response, as well as at the hearing, the respondent raised three preliminary objections. Among other things, it argued that the complaint is inadmissible and that it should be summarily dismissed because it was not filed within the time limit set out in s. 190(2) of the *PSLRA*, which reads as follows:

> ***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.*

[6] Under s. 190(2) of the *PSLRA*, a complaint must be made not later than 90 days after the date on which the complainant knew or ought to have known of the action or circumstances that gave rise to it. Accordingly, the triggering event for a breach alleged by a complainant must occur within the 90 days preceding the complaint's filing. In this case, the deadline was May 17, 2016, since the Board received the complaint on August 15, 2016. In any event, I indicated to the parties that I was willing to consider evidence about the action or circumstances that occurred outside the 90-day period to obtain an overall and contextual assessment of the evidence, as far as that evidence was relevant.

[7] The sole purpose of the hearing was to consider the respondent's preliminary objections. For the reasons that follow, I allowed two of its three objections. I decided not to address the third.

II. Summary of the evidence

[8] Neither party called a witness to testify; however, by consent, they did file documentary evidence, namely, Exhibits E-1 to E-6 and P-1 to P-3.

[9] It is important to keep in mind several contextual facts that both parties referred to during their submissions.

[10] The RCMP is a unique institution in the public service in that it is a national police service. Given the nature of its duties, at the outset of collective bargaining in the public service in 1967, Parliament determined that RCMP members and certain employees were not permitted to bargain collectively and that they were specifically excluded from the definition of "employee" within the meaning of the *PSLRA.*

[11] This exclusion was successfully challenged in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1. The Supreme Court of Canada ("the Supreme Court") decided that excluding RCMP members from collective bargaining under paragraph (d) of the definition of "employee" in s. 2(1) of the *PSLRA* contravened the *Canadian Charter of Rights and Freedoms.* The section of the *PSLRA* in question was declared without effect. That declaration was suspended for 12 months (which was extended to May 16, 2016) to allow for new legislation to be created governing collective bargaining for the RCMP. However, by May 16, 2016, no such legislation had been introduced and proclaimed into force. Consequently, effective the following day, members of the RCMP became "employees" for the purposes of the *PSLRA* and were granted the right to bargain collectively and to avail themselves of the recourse provided in it.

[12] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board, the

Federal Public Sector Labour Relations and Employment Board Act, and the *Federal Public Sector Labour Relations Act*.

[13] The new legislation contains a new definition of "employee." The exclusion of RCMP members from collective bargaining is restricted to officers, within the meaning of s. 2(1) of the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10). In accordance with the new definition, the wording of s. 186 was also amended, although not substantially. Obligations with respect to unfair labour practices, as described earlier under the *PSLRA*, are unchanged.

III. Summary of the arguments

A. For the respondent

[14] The respondent raised three preliminary objections. First, it submitted that the complainant's allegations that s. 186(1)(b) of the *PSLRA* was violated are inadmissible because he does not have the standing to act in the circumstances, given that the provision in question refers to an employee organization and not to a member, an officer, or a representative of one. According to the respondent, only an employee organization has the standing to act or file a complaint under s. 186(1)(b). On that point, the respondent referred me to *Reekie v. Thomson*, [1998] C.P.S.S.R.B. No. 120 (QL), *Feldsted v. Treasury Board*, [1999] C.P.S.S.R.B. No. 57 (QL), *Buchanan v. Correctional Service of Canada*, 2001 PSLRB 128, *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95, *Bialy v. Heavens*, 2011 PSLRB 101, and *Verwold v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 66.

[15] Second, the respondent submitted that the complaint should be dismissed because it was not filed within the period set out in s. 190(2) of the *PSLRA*. The respondent reminded me that the *PSLRA* stipulates that complaints filed under s. 190(1) must be made not later than 90 days after the date on which the complainant knew or ought to have known of the action or circumstances that gave rise to it. According to the respondent, this period is mandatory and cannot be extended. On that point, it referred me to *Scott v. Public Service Alliance of Canada*, 2013 PSLRB 72, *Gibbins v. Canada Revenue Agency*, 2015 PSLREB 17, *Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98, and *Mark v. Canadian Food Inspection Agency*, 2007 PSLRB 34.

[16] The respondent argued that the circumstances that gave rise to the complaint occurred well outside the 90-day period and that the complainant was fully aware of the events when they occurred. He was aware of the employer's alleged directive not to use its resources from February 17, 2015 (Exhibit E-2). With respect to the alleged reprisals, his earlier numerous complaints and grievances (Exhibit P-1) establish that he knew of these events between 2007 and 2015, well before the 90-day period.

[17] Third, the respondent submitted that the Board did not have the jurisdiction to deal with the complaint because the circumstances that gave rise to it occurred before May 17, 2016, the date on which the Board was granted jurisdiction, even before the Supreme Court's decision in *Mounted Police Association of Ontario.* According to the respondent, the complainant could not avail himself of recourse or remedies under the *PSLRA* before May 17, 2016. Therefore, he could not base his complaint on events that occurred before that date, much less before the Supreme Court's decision. The respondent reminded me that that decision has no retroactive effect. On that point, it referred me to *McNeil v. Treasury Board (Department of National Defence)*, 2009 PSLRB 84, and *Lafrance v. Treasury Board (Statistics Canada)*, 2006 PSLRB 56.

B. For the complainant

[18] The complainant attempted to address several issues primarily related to the merits of his complaint and of his earlier grievances. He also provided me with a document of responses to the respondent's arguments. However, he did not address the three preliminary issues that I must decide, at least not in a sufficiently coherent manner to allow me to make an informed summary.

IV. Reasons

A. The complainant's standing

[19] As suggested in the case law that the respondent noted, only an employee organization or its duly authorized representative may base a complaint on a violation of s. 186(1) of the *PSLRA*, whether under s. 186(1)(a) or (b). The state of the law on this point is clear and has been applied consistently by this Board. Subsection 186(1) refers to the protection of an "employee organization," while s. 186(2) refers to the protection of a "person" who is a member of such an organization. The complainant is not a duly authorized representative of an employee organization. Therefore, my opinion is that his allegations of a violation of s. 186(1)(b) are inadmissible because he

does not have standing in the circumstances. Thus, I must dismiss the portions of his complaint that deal with that paragraph.

B. <u>The 90-day period</u>

[20] Compliance with this time limit is paramount, and the fundamental condition to respect in this context appears in s. 190(2) of the *PSLRA*, as follows:

> ***190 (2)*** *… 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.*

[21] I agree with the respondent's argument that the 90-day time limit set out in s. 190(2) is mandatory and that no other *PSLRA* provision authorizes the Board to extend it. That is an accurate account of the current state of the law that applies to this case.

[22] The Board has often reiterated the binding nature of s. 190(2), namely, in *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78 at para. 55, which reads as follows:

> *[55] That wording is clearly mandatory by its use of the words "must be made no later than 90 days …". No other provision of the* PSLRA *gives jurisdiction to the Board to extend the time limit prescribed in subsection 190(2).…*

[23] Based on the evidence before me, I must determine the moment on which the complainant knew or ought to have known of the circumstances that gave rise to his complaint and whether he filed it within 90 days of that date. This is a factual issue.

[24] The complainant filed his complaint on August 15, 2016. Although he provided clarification to the Board on October 26, 2016, in my opinion, he expressed the intention of filing his complaint on August 15, 2016, by filing a Form 16. Therefore, his complaint should arise from the action or circumstances that he knew or ought to have known of on May 17, 2016, at the earliest. Based on the documentary evidence tendered by the parties, in my opinion, he knew or ought to have known of the action or circumstances that gave rise to his complaint well before May 17, 2016. The evidence clearly established that he was fully aware of the events that gave rise to his complaint when they occurred and that those events took place between 2007 and 2015 (Exhibits E-2, E-3, E-4, E-5, E-6, and P-1). Those events are the

basis of over 14 grievances and complaints filed with the RCMP during that period.

[25] Having considered all the evidence before me, I am satisfied that the circumstances giving rise to the complaint did not occur in the 90 days before it was filed. The real reasons for it go back much further. They date from 2007, or nine years before the complaint was filed. Consequently, the complainant could not claim that he became aware of the action or circumstances that gave rise to his complaint within the 90-day period in question, i.e., between May 17, 2016, and August 15, 2016. Consequently, I find that the complaint was filed outside the period set out in s. 190(2) of the *PSLRA*

[26] For these reasons, I must allow the respondent's objection that the complaint is inadmissible because it is out of time. Therefore, the complaint is dismissed for lack of jurisdiction.

C. Could the complainant base his complaint on events that occurred before he was subject to the *PSLRA*?

[27] Since I found that the complaint should be dismissed on the basis of the first two objections, I am not convinced of the need to address the respondent's third objection, and I will not. In any event, it would be at best a purely theoretical exercise, since I have already found that the complainant knew of the circumstances that gave rise to his complaint well before the deadline of concern, namely, between May 17, 2016 (the date that coincides with the coming-into-force of the Supreme Court's decision), and August 15, 2016.

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

(The Order appears on the next page)

V. Order

[29] The complaint is dismissed. I order the file closed.

December 8, 2017.

FPSLREB Translation

Stephan J. Bertrand,
a panel of the Federal Public Sector Labour Relations and Employment Board