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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

JERRY NOLET

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Nolet v. Public Service Alliance of Canada

In the matter of the jurisdiction of the Board to consider a complaint made pursuant to s. 188(c) of the *Federal Public Sector Labour Relations Act*

Before: James Knopp, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Claude Gagnon, counsel

For the Respondent: Nina Ziolkowski, Public Service Alliance of Canada

Decided on the basis of written submissions,
filed February 8, 2019.

REASONS FOR DECISION

Application before the Board

[1] On January 25, 2018, Jerry Nolet (“the complainant”) filed a complaint under s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; the *FPSLRA*). In subsequent correspondence with the parties, the nature of the complaint was more accurately characterized as falling under s.188(c) of the *FPSLRA*.

[2] As per the reasons set forth below, the complaint is dismissed for lack of jurisdiction.

Background

[3] The complainant is a member of the Union of Health and Environment Workers (UHEW), a component of the Public Service Alliance of Canada (PSAC or “the respondent”).

[4] This matter originated with an internal complaint that the complainant filed under the PSAC’s *Constitution and Regulations* (“the internal complaint”) against six representatives elected to the executive of Local 70008. In it, he alleged that his right to stand for election to the local executive had been unjustly denied.

[5] On January 20, 2017, the UHEW’s co-president received the internal complaint and then established an investigation committee. The investigation ran its course. An investigation report was issued in June 2017 recommending disciplinary action in the form of removing the six representatives in question from the local executive.

[6] The six representatives then filed an appeal under the provisions of PSAC Regulation 19, entitled “Regulation Governing Membership Discipline”. An appeal tribunal was established, and the appeal was heard in accordance with the PSAC’s *Constitution and Regulations*. On November 3, 2017, the appeal tribunal released its decision, setting aside the investigation committee’s findings due to flaws in the investigation process.

[7] The appeal proceedings and the decision were kept confidential. Only the parties to the appeal, namely, the PSAC and the six representatives, attended the hearing and received the decision.

[8] The complainant was not notified of the appeal proceedings and did not receive a copy of the decision because he was not a party to the appeal.

Summary of the arguments

[9] The complainant initially filed his complaint under s. 190(1)(g) of the *FPSLRA*, and the respondent made several submissions on the appropriateness of that provision. The respondent's position is that the Federal Public Sector Labour Relations and Employment Board ("the Board") lacked jurisdiction.

[10] In an effort to assist the parties with their arguments, I issued a letter decision on January 10, 2019, which read as follows:

On May 10, 2018, the Board ruled this matter was to proceed to a hearing on the issue of jurisdiction only.

Since my assignment to this matter on January 3, 2019, I have had an opportunity to review all of the documentation provided to date by the parties with respect to jurisdiction. I am satisfied I am able to conduct this hearing by way of written submissions only. I will not need to hear the testimony of witnesses in order to make a threshold decision on the matter of jurisdiction.

I wish to assist the parties in narrowing their arguments on jurisdiction by making the following preliminary findings of fact. I find [the complainant] filed his complaint under s. 190(1)(g), which states that a Board must examine any complaint of an unfair labour practice, within the meaning of s. 185. Section 185, for the sake of clarity, further defines an unfair labour practice as being anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or 189(1). I agree with the respondent that subsections 186, 187 and 189 do not apply to the present circumstances.

I also agree with the respondent's observation that [the complainant], in filling out paragraphs 6 and 7 of Form 16 (the complaint form), has squarely positioned himself in alleging a breach of s.188(b) or (c) of the Act.

I find s. 188(b) does not apply to the present circumstances. [The complainant] has not been expelled or suspended from membership in the employee organization.

I refer the parties to the case of Raymond Strike v. Public Service Alliance of Canada 2010 PSLRB 22, paragraph 23: "The broad wording of paragraph 188(c) of the PSLRA implies that Parliament left the interpretation of what constitutes a discriminatory imposition of discipline to the Board, which must evaluate each case on its own merits."

The most recent submissions of the parties have made it clear that the essence of [the complainant]'s complaint is contained solely within the provisions of subsection 188(c), which states

“No employee organization . . . shall take disciplinary action against or impose any form of penalty on an employee by applying the employee organization’s standards of discipline to that employee in a discriminatory manner.”.

I therefore wish to receive formal written submissions from the parties, who are to strictly confine their arguments to the provisions of s.188(c). I take note of the reference, by both parties, to the cases of Nelson Hunter v. Union of Canadian Correctional Officers 2017 FPSLRB 4 and Irene J. Bremsak v. Professional Institute of the Public Service of Canada 2009 PSLRB 103, both of which provide helpful insight in the interpretation of s.188(c).

*With the issues now quite narrowly defined, I feel a tight deadline for the submission of written arguments is justified. Accordingly, I order the parties to provide, **by close of business Friday, February 8, 2019**, their written submissions on the jurisdiction of the Board to hear [the complainant]’s grievance.*

[Emphasis in the original]

[Sic throughout]

[11] The written submissions were received by the deadline.

[12] The complainant maintains that the Board has jurisdiction to hear cases of internal discipline, citing three different decisions in *Veillette v. Professional Institute of the Public Service of Canada*, as follows: 2009 PSLRB 58, 2009 PSLRB 64, and 2009 PSLRB 174 (“*Veillette* decisions”).

[13] The respondent maintains that the Board lacks jurisdiction. Section 188(c) of the *FPSLRA* does not apply to the substance of the complaint, which pertains to the PSAC’s internal affairs. In addition, the PSAC did not discipline or penalize the complainant, which must be triggered for s. 188(c) of the *FPSLRA* to apply.

[14] For the following reasons, I agree with the respondent. The Board does not have the requisite jurisdiction to hear this matter.

Reasons

[15] The purpose of s. 188(c) of the *FPSLRA* is very clearly stated in *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103 (“*Bremsak*”), the relevant paragraphs of which are the following:

[61] *I also agree with another decision under the Code that*

pointed out the existence of section 185 of the Code does not mean that the CLRB is a final appeal for the internal decisions made by a bargaining agent (*James Carbin v. International Association of Machinists and Aerospace Workers (1984)59 di 109*). In my view, that proposition applies to section 188 of the [FPSLRA] as well. That is, the Board's role under paragraph 188(c) is to ensure that the bargaining agent's standards of discipline are free from discriminatory action. Similarly, the role of the Board under paragraph 188(e) is twofold. First, it is to ensure that there is no discrimination against an employee with respect to membership in an employee organization and, second, to enforce the prohibition against intimidation, coercion or the imposition of a financial "or other penalty" because a person has filed an application or complaint under Part 1 of the [FPSLRA] or a grievance under Part 2 of the [FPSLRA].

[62] Those provisions raise specific issues under the [FPSLRA] and they do not authorize the Board to act as the final arbitrator of all internal disputes within a bargaining agent. They do not, for example, authorize the Board to decide the scope of offences that may be the subject of discipline within the bargaining agent or that may deny membership in the bargaining agent (*Fred J. Solly; cited in Beaudet-Fortin v. Canadian Union of Postal Workers (1977) 105 di 98, at para 86*). Simply put, it is not for the Board to say what is a legitimate internal policy or rule or by-law of a bargaining agent except in narrow circumstances. These circumstances include where the policy, rule or by-law is itself discriminatory or its application has discriminatory consequences....

...

[73] It is clear that Parliament intended the Board to intervene when a bargaining agent applies disciplinary standards in a discriminatory manner. I also accept that this has a procedural aspect so that disciplinary procedures may be applied in a discriminatory manner. However, I am unable to find in section 188 the authority for the Board to adjudicate disputes about the interpretation and application of a bargaining agent's internal by-laws (or policies) beyond the issue of discrimination. Similarly, I cannot find there is authority for the Board to adjudicate whether a by-law was deficient in some way, or whether a by-law is required in a specific area....

...

[77] With this in mind, the issue is not whether the interpretation or application of a by-law or policy was deficient generally or whether the by-law or policy was itself deficient. Instead, the issue is whether the evidence supports the elements set out in paragraph 188(c) of the [FPSLRA]....

[16] I agree with the following argument of the respondent: "... [T]he Board's role is not to comment on whether it agrees or disagrees with Regulation 19 or with PSAC's interpretation of it, except in very narrow circumstances (when an employee is disciplined or penalized in a discriminatory way)..."

[17] The complainant cited the three *Veillette* decisions in furtherance of his argument that I have jurisdiction. I can distinguish them from the present set of facts on the very simple basis that all three arose out of an instance of formal discipline imposed on Mr. Veillette by his bargaining agent following an altercation in a hotel bar that resulted in torn clothing and a broken rib. The discipline, namely, a two-year suspension, quite properly triggered s. 188(c) of the *FPSLRA*.

[18] In the present matter, the PSAC did not subject the complainant to any discipline and imposed no penalty on him. Rather, his complaint pertains to an aspect of the PSAC's disciplinary process, at the appeal level.

[19] His complaint clearly articulates its nature. To paraphrase, since it is very lengthy, the complainant takes issue with how the PSAC's appeal process is conducted. He was not invited to participate in the appeal process because he was not a party to the appeal. For the same reason, he was not provided with a copy of the appeal tribunal's decision. He maintains that that "secret process", as he put it, is a violation of natural justice.

[20] I do not doubt that the complainant had a keen interest in the appeal proceedings, since they involved an appeal of a disciplinary decision rendered on a complaint that he made. However, his involvement in the investigation, which formed the basis for the decision that was appealed, did not automatically make him a party to the appeal.

[21] In summary, the complainant took issue with an aspect of the PSAC's internal governance mechanism, over which I have no jurisdiction. Section 188(c) of the *FPSLRA* was not triggered in the circumstances of the complaint before me.

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

(The Order appears on the next page)

Order

[23] The complaint is dismissed for lack of jurisdiction.

March 18, 2019.

**James Knopp,
a panel of the Federal Public Sector
Labour Relations and Employment Board**