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



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

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BETWEEN

**MATHEU STIERMANN**

Complainant

and

**TREASURY BOARD (DEPARTMENT OF INDUSTRY)**

Respondent

Indexed as

*Stiermann v. Treasury Board (Department of Industry)*

In the matter of a complaint made under section 133 of the *Canada Labour Code*

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

**For the Complainant:** Peter Engelmann, counsel

**For the Respondent:** Karl Chemsy, counsel

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Heard at Ottawa, Ontario,  
February 14 to 16 and April 16, 2018.

## REASONS FOR DECISION

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### I. Summary

[1] Mathieu Stiermann (“the complainant”) filed this complaint under s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; “the *Code*”) alleging that he suffered a reprisal from his employer in response to filing complaints under the *Code* against his managers, which alleged workplace violence.

[2] The complainant testified that he suffered from an illness at the relevant time that was triggered in part by the stress and anxiety he experienced at the workplace, which he attributed to an acrimonious relationship with his supervisors. As a result, his physician opined that he required to be permanently moved from his workplace, both geographically and organizationally. He was therefore assigned to another branch within the department.

[3] However, after filing the second of two complaints of workplace violence at the new workplace, the employer terminated the complainant’s assignment agreement as it said it had no more offices where he could work, nor managers who had not been accused of committing acts of workplace violence against the complainant who could supervise him.

[4] The complainant told his employer that due to his medical condition, he could not work for any of his home section’s managers either. Having exhausted all his paid leave, he went on unpaid leave. He then filed this complaint alleging that a reprisal occurred, which is prohibited under the *Code*.

[5] For reasons explained later in this decision, and after careful consideration of all the evidence and arguments, I conclude that there is insufficient evidence upon which I can find that the actions invoked by the complainant were in any way actions, penalties, discipline, or reprisals by the employer in response to his workplace violence complaints.

### II. Background

[6] The complainant attended law school, following which he began his public service career in the Canadian Intellectual Property Office (CIPO) of Innovation, Science and Economic Development Canada (ISED). He had 15 years’ experience in the public service and was working in a position classified EC-05 with the CIPO when the events relevant to this matter began. He was subject to the collective agreement between the Treasury Board and the Canadian Association of Professional Employees that expired

on June 21, 2014 (“the collective agreement”).

[7] The complainant testified that by late in 2015, he was experiencing stress at his workplace that caused him to seek an accommodation to work elsewhere and under a different supervisor. The hearing received a letter from a physician dated October 23, 2015, which indicated that the major source of stress the complainant was experiencing was due to a “... poor relationship with his current supervisor who has been responsible for overseeing his activities since March 2015.”

[8] The letter continues, stating that despite his cooperation with the treatment, he failed to show an improvement in symptoms. The physician recommended that he “... should be allowed an opportunity to work in a new setting where he can avoid the antagonistic relationship with his current supervisor.”

[9] The complainant also submitted notes that his physician and psychiatrist wrote to the employer that state that among other things, the complainant “... requires ASAP both a change of physical and geographical location”, along with the following:

[The complainant’s] *functional limitations are permanent, and so, he cannot be accommodated within his substantive position or within his current sector and or geographical area*  
....

[He] *requires a different position involving similar work, and so, he needs to be transferred to a similar job better suited to his functional limitations and needs in another sector or organization as above stipulated with which a lateral transfer can be arranged.*

...

[10] To accommodate the complainant, the employer assigned him to another sector of the department, at the Industry Sector, Aerospace, Defence and Marine Branch with offices in Ottawa, Ontario, rather than Gatineau, Quebec, where his substantive position was based. The assignment was to run from July 18, 2016, to January 17, 2017.

[11] In October 2016 the complainant made a complaint of workplace violence against his supervisor in the Ottawa office. On November 15, 2016, he filed a complaint with the director-general of the branch to report that his director and associate-director where he had been assigned in Ottawa had also subjected him to workplace violence, specifically bullying and harassment constituting psychological harm.

[12] On November 17, 2016, the complainant was informed that his assignment was being terminated.

[13] The written complaint of reprisal filed with what is now known as the Federal Public Sector Labour Relations and Employment Board (the Board), which is dated March 22, 2017, and was the subject of the hearing, contains the following allegation:

*On 20161115 I submitted a formal complaint - and prima facie evidence - of Work Place Violence under Part XX [Violence Prevention in the Workplace] of the [Canada Occupational Health and Safety Regulations, SOR/86-304] to my then host sector Director General, Ms. Mary Gregory; who on 20161117 - I submit, in an act of reprisal - informed me that my assignment was being "terminated". On 20161118 my home sector Director, Mr. Scott Vasudev, then proceeded to inform me that I was being placed on -in effect- administrative leave without pay until otherwise notified. Mr. Vasudev reconsidered and maintained his decision of 20161118 via email on 20161222.*

...

### III. Issues

[14] The parties agreed that I must consider four issues to determine whether s. 147 of the *Code* was breached. Those issues are set out in the decision of the Board in *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52 at para. 64, paraphrased as follows:

- i) Did the complainant exercise his rights under the *Code* (s. 147)?
- ii) Did he suffer reprisals?
- iii) Were the reprisals of a disciplinary nature within the meaning of s. 147 of the *Code*?
- iv) Is there a direct link between him exercising his rights and the actions taken against him?

[15] As the second and fourth components of the test are closely connected, I will accordingly address them together in my analysis.

[16] The relevant sections of the *Code* include the following:

...

**133 (1)** *An employee, or a person designated by the employee for the purpose, who alleges that an employer has*

*taken action against the employee in contravention of section 147 may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention.*

...

*147 No employer shall dismiss, suspend, lay off or demote an employee, impose a financial penalty or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee*

...

*(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*

#### **IV. Analysis**

##### **A. Did the complainant exercise his rights under the Code (s.147)?**

[17] Initially, the employer challenged the complainant's allegations, stating in its written submissions that they neither gave rise to the exercise of a right under the Code nor satisfied the meaning of "violence" (see pages 3 of 6 of the written submissions of April 13, 2017).

[18] However, at the hearing, the employer conceded this first step of the requirements under s. 147 of the Code.

##### **B. Did he suffer reprisals that were directly linked to the exercise of his rights under the Code?**

[19] The complainant pointed to the fact that within two days of him alleging workplace violence against his managers, the employer decided to terminate his assignment agreement. He argued that management knew that he had exhausted his annual paid leave when his assignment was ended prematurely and that it knew or should have known that that would cause him to have to go on leave without pay.

[20] The complainant sent an email to Mary Gregory, who was the director general of the branch where he was assigned, at 9:52 a.m. on November 15, 2016. He wrote as follows:

***Subject: Report of Workplace Violence - URGENT***

*Dear Director General, Ms Mary Gregory:*

*I am reporting to you that I have been subjected to Work*

**Place Violence, or “WPV”** - specifically, bullying and harassment constituting psychological harm, primarily by my Director, Ms Sharon Irwin, and to a lesser degree by my Deputy Director, Mr Denis Bourque - as defined in section 3.4 of the ISED Violence Prevention in the Workplace Policy.

*These allegations are based on a series of occurrences which I wholeheartedly believe constitute plain and obvious illegitimate and improper exercises of their authorities and responsibilities, when their actions and inactions are contextualized.*

***I hereby request your assistance in attempting to resolve my complaint - and to avoid potential future disabling injuries - ASAP.***

*To this end I would like to meet with you at your earliest convenience to describe and discuss the incidents - which, again - I sincerely believe constitute WPV, and options moving forward, including a possible solution in the form of an opportunity at level within another sector of ISEDC.*

*Please note I must take leave for a medical appointment immediately, and that I return at 13:25; and so, I will be available to meet with you afterward.*

*Please note as well that for the time being I wish to reserve my right to be represented.*

*Regards, Mathieu*

[Emphasis added]

[21] Ms. Gregory testified that having received this letter, she decided that she could not allow the complainant to return to the same workplace under the supervision of the same managers who were now the subject of his accusation of workplace violence.

[22] I note that ISED’s *Violence Prevention in the Workplace Policy* was tabled as an exhibit. It states as follows at sections 8.1 and 8.2 that senior management, managers, and supervisors are responsible for the following:

- *Providing a safe, healthy and violence-free workplace;*  
[and]
- *Responding to reported workplace violence by taking necessary actions to protect employees where possible ....*

[23] Ms. Gregory testified that she first heard of the complainant when someone from Human Resources told her that a person working in a departmental division in Gatineau was experiencing personnel issues and required an accommodation in the

form of relocation to Ottawa. She was told that the department wished to move him into one of the branches that she oversaw in Ottawa based upon his request.

[24] Ms. Gregory testified about her many duties and urgent files that required her daily attention to keep the minister briefed. She stated that she was often required to attend meetings or events, sometimes on short notice, with the minister and other senior government and industry officials.

[25] Ms. Gregory testified that upon hearing of the complainant's first allegation of workplace violence that arose in her division, she agreed immediately to assign different supervisors to oversee his work in order to remove him from oversight of the accused.

[26] She stated that when she received the complainant's emailed complaint containing the second allegation of violence, she immediately engaged Human Resources. At the first opportunity, which was on November 15, 2016, she met with him on an urgent basis. She testified that at the meeting, he told her that he felt belittled by his manager because he was being assigned menial tasks and that a person at his EC-05 classification should carry out analyses and make recommendations. He also explained to her how his manager, from her division, ignored him and that his value-added input into the branch's work was being ignored. He also told her that at one point one of his managers apologized to him for the lack of attention he received and said that it was due to the Manager being busy with other urgent work.

[27] He told her that he had booked several meetings but that they had been cancelled. His view was that his assignment to her division had been forced on her, that he did not like the work assigned to him, and that he wanted to focus his energy on finding a better position elsewhere.

[28] In examination-in-chief, Ms. Gregory was asked about the specifics of the workplace violence allegations. She responded that the complainant had told her that the three members of her management team had all bullied him. It surprised her as she knew the managers well and had never had a problem with them. She stated that still, she took the allegations seriously.

[29] Ms. Gregory testified that she believed that it would have been inappropriate for her to allow the complainant to continue to work under the supervision of the three managers, given his allegations of their committing acts of workplace violence against

him.

[30] Ms. Gregory explained that she had no other managers under her purview that were available to accept an immediate assignment of the complainant to their branch. She said that she also looked for other options in her division but explained that it was an extremely busy time. A very high-profile matter was being managed for the government that involved a huge private-sector employer being engaged with senior levels of government. She and her management team were regularly working very long days and evenings to keep on top of the work, which was in the public spotlight.

[31] She said that the management team simply had no capacity available to organize an immediate assignment of the complainant to new duties and then to help him transition into and after that oversee his new tasks. Ms. Gregory testified that the complainant had already identified a position in a different division to move into that he found attractive. She explained that she had no control over that division and suggested that he contact Human Resources to investigate that option.

[32] Ms. Gregory explained that at the end of their first meeting, she had the clear sense that the complainant's assignment could not continue as he had said he wanted to pursue other options. She added that her view was that he could no longer report to any of the three members of the management team to whom he had reported (in two separate complaints) having committing acts of workplace violence against him.

[33] The meeting ended with Ms. Gregory telling the complainant that she would look into his workplace violence allegations. They met again two days later, on November 17. Each was accompanied by another person. It was a brief meeting, as Ms. Gregory testified that it essentially consisted of her telling the complainant that she was ending his assignment agreement to her division and that he would be required to return to his home branch, the CIPO, and deal with the Human Resource staff there for assistance with his position.

[34] I heard testimony and lengthy argument about whether the complainant agreed or acquiesced by his silence to his assignment agreement being ended. The complainant argued that the employer tried to buttress its case by inaccurately portraying the termination of the complainant's assignment agreement as being consensual. Counsel for the complainant also argued that I should make adverse findings of witness credibility of the employer's witnesses due to this same matter.



[35] Ms. Gregory testified that the complainant came to her in their first meeting and strongly expressed a desire to be assigned to a different job in another part of the department that he had already identified. She added that he also expressed his frustration with what he viewed as menial tasks being assigned to him by her managers.

[36] In describing their second meeting where she told the complainant his assignment to her division was being terminated, Ms. Gregory testified that he had no reply after she told him that the assignment was ending. She stated that she inferred from his silence that he agreed with her decision. She acknowledged that he did ask her if the department would pay for his psychiatric counselling treatment. She said that she advised him to speak to his home branch about all such things.

[37] Counsel for the complainant showed Ms. Gregory a copy of her notes which she confirmed that she took during this second meeting and specifically pointed out that at the end of the note there was what appeared to be somewhat of an addendum written and dated over two months after the meeting, where she wrote that the complainant agreed to end the assignment. Counsel pursued this matter in cross-examination where Ms. Gregory admitted that, in fact, the termination of the assignment agreement had been her unilateral action.

[38] I listened to the testimony and argument about whether the assignment agreement had been terminated improperly given that the agreement stated that it could be terminated by the parties' mutual agreement. I conclude that the question of whether the assignment agreement was terminated in accordance with its provisions has no probative value regarding the questions that I must determine. The issue before me is whether the complainant suffered reprisals that were directly linked to the exercise of his rights under the *Code*.

[39] In pursuing the matter of whether the decision to terminate the agreement was tainted in any way, counsel cross-examined Ms. Gregory about her knowledge of the circumstances of the complainant. She confirmed that she had known prior to his arrival in her division that the complainant was being assigned as part of an accommodation effort due to problems in his home branch, but that she did not know the related details.

[40] After the assignment was terminated, the complainant was returned to his home branch at CIPO, where his manager would be Scott Vasudev, who was one of the

managers that the complainant had previously accused of mistreatment, which had led to his assignment out of the branch and out of Gatineau.

[41] Mr. Vasudev testified that very shortly after learning of the assignment agreement's termination, the complainant's union asked him to extend the complainant paid leave as a new assignment was sought but the request was denied. Mr. Vasudev was asked why he did not approve paid leave that time when he had already done so for the complainant in February 2016.

[42] Mr. Vasudev explained that he signed a letter on December 22, 2016, advising that the complainant would continue to be at home on sick leave and not on "other leave with pay" as had been requested. In the letter, Mr. Vasudev states that the January and March 2016 medical notes from the complainant's physicians set out that due to medical reasons, he was permanently unable to work in the CIPO. Mr. Vasudev explained that the medical notes were ambiguous as to the precise nature of the complainant's functional limitations. Since they stated that he was permanently unable to perform any duties at the CIPO, it was decided to keep him on sick leave.

[43] Mr. Vasudev then stated that he had a long history with the complainant, who had often exhausted his paid sick leave before the end of the fiscal year. Mr. Vasudev expected that situation to recur once the assignment agreement was terminated.

[44] He added that because the complainant's physician had stated that he should have no contact with the CIPO, he did not have any contact with the complainant in the aftermath of dealing with his request for benefits or the search for a new position.

[45] When he was asked if he had had the discretion to extend paid leave to the complainant in that situation after his normal paid leave had been exhausted, Mr. Vasudev replied that he had. He pointed to clause 21.17 of the collective agreement, entitled "Leave With or Without Pay for Other Reasons", as follows:

*At its discretion, the Employer may grant:*

*(a) leave with pay when circumstances not directly attributable to the employee prevent his or her reporting for duty. Such leave shall not be unreasonably withheld;*

*(b) leave with or without pay for purposes other than those specified in this Agreement.*

[46] He further testified that that decision was consistent with the Treasury Board of Canada's *Directive on Leave and Special Working Arrangements*. Appendix A, entitled *Federal Public Sector Labour Relations and Employment Board Act and Canada Labour Code*

“Leave with Pay or Time off Work with Pay”, states as follows:

***1. Management of leave with pay or time off work with pay***

*Upon application from persons appointed to the core public administration, persons with the delegated authority may approve leave with pay in accordance with the relevant collective agreement of terms and conditions of employment. Time off work may be granted in accordance with the provisions set out in this Appendix.*

*1.1 Persons with the delegated authority who approve leave or grant time off work with pay have the right to schedule such absences in a manner that takes into account operational requirements. All absences from work must be authorized by the person with the delegated authority to approve the specific absence.*

[Emphasis in the original]

[47] Counsel for the complainant argued that but for the exercise of the complainant’s rights under the *Code* to report workplace violence, as protected by s. 147, he would not have suffered any harm.

[48] He also referred me to a series of cases which pointed out that the Board should look to see if the impugned decision of the employer was tainted by the complainant’s exercise of his rights, and that the employer has the onus of proving that a penalty is truly unrelated to the exercise of *Code* rights, and that there is a low threshold for finding that the employer violated the *Code* by committing a reprisal, given the purposive nature of the *Code* to protect employees.

[49] Counsel for the complainant also argued that the employer’s witnesses lacked credibility given their testimony suggesting that the complainant agreed with ending his assignment agreement.

[50] Counsel for the employer stressed the importance of the complainant’s plea that he was seeking urgent help to avoid future “disabling injuries”. Counsel argued that this left no option for Ms. Gregory other than taking immediate action. Counsel submitted that this left Ms. Gregory with nobody else in her division who could oversee his work.

[51] I am not persuaded that the decision to cancel the assignment was made in reprisal to the complaint of November 15. The complainant advised Ms. Gregory that without her assistance “ASAP,” he risked “potential future disabling injuries.” He made

her aware, at their November 15 meeting, of the problems he was experiencing.

[52] I find as a result that she was convinced that it would be inappropriate to keep the complainant employed under the managers' supervision given his allegations of workplace violence and that the three of them all worked in the Ottawa offices. No other managers were available to supervise the complainant in her branch so her only option was to end the assignment.

[53] While the complainant might well have experienced the result of the terminated assignment as punitive as it meant that he ended up at home on unpaid leave, Ms. Gregory's action was nonetheless caused solely by his urgent plea to be protected from future harm. As counsel for the employer argued, under the *Code*, a report of violence creates a very serious duty on management to deal quickly with the matter.

[54] After he made his closing argument, I asked counsel for the complainant, given those management duties, what Ms. Gregory should have done when she received the complainant's rather alarming letter stating that he had been subjected to violence from his manager, that it was urgent, and that he needed her assistance to avoid potential future disabling injuries.

[55] Counsel for the complainant replied with candour and conceded that indeed, Ms. Gregory was ok to conclude that she could not return the complainant to his same workplace under the supervision of the same managers who were the subject of his workplace violence complaints.

[56] However, counsel for the complainant hastened to add that Ms. Gregory's decision was nevertheless tainted and that she should have done much more to help the complainant; namely, she should have arranged a new assignment that met with his approval and ensured that he was extended unlimited paid leave while the new assignment was secured. Having closely observed all the witness testimony and having reviewed all the documentary evidence adduced as exhibits in the hearing, I am convinced that Ms. Gregory acted out of a *bona-fide* concern for the complainant's well-being as was her duty according to the policies noted previously.

[57] Counsel for the employer argued that most of the complainant's case dealt with accusations of failure to accommodate. He pointed to submissions of the complainant's counsel to the effect that the employer should have done more to promptly find him a new assignment and to separate him from all the managers in his

division and that it would have been nice had management offered ex-gratia salary continuation while he was on leave pending the next assignment.

[58] The outcome of this situation may in fact have been better for the complainant had she chosen to do so. But it does not establish that Ms. Gregory's choice to end the assignment was directly linked to the exercise of his right to complain.

[59] The complainant also maintained that his home sector's management team's denial of his request to be placed on leave with pay after his assignment was terminated was made in reprisal to his workplace violence complaint as well. However, when Mr. Vasudev was asked if he knew that the complainant had made workplace violence allegations against his managers just before the assignment was terminated, he testified that he heard of it only weeks later. No evidence was adduced demonstrating that Mr. Vasudev had any knowledge of the circumstances giving right to the assignment's cancellation, let alone the November 15 workplace violence complaint regarding the events that allegedly took place in the Ottawa offices.

[60] For these reasons, I find, in answer to the second and fourth question at issue, that the employer did not make a reprisal that was directly linked to the exercise of the complainant's right under the *Code*.

### **C. Was the action disciplinary in character?**

[61] Given my finding about the absence of any reprisal, the discussion about whether the termination of the assignment is disciplinary is moot. However, for greater clarity and since evidence was adduced on the issue, I will make a number of findings.

[62] The complainant contends that the termination of the assignment and consequential return to this home sector effectively imposed a financial penalty on him because he could not work there in accordance with his physicians' instructions and he had exhausted all his paid sick leave credits. As a result, he was placed on what he says is in effect administrative leave without pay.

[63] Counsel for the complainant pointed to the fact that the management team knew not only that the complainant's paid sick leave was fully expended, but also that it had a negative balance months in advance of the termination of his assignment, which meant he was off work on unpaid leave.

[64] However, there is no evidence that Ms. Gregory, the person who decided to

terminate the assignment, had any knowledge whatsoever of the financial impact on the complaint if he was returned to his home sector.

[65] When she was asked if she knew anything about the complainant's sick leave balance when she dealt with him and ended his assignment, she said that she knew nothing about it as at that time, his home branch handled his pay and benefits. She added that when he asked her during their November 15 meeting to allow him to be at home with "on-call" status and leave with pay, she replied that she had never heard of such a status, and that she told him to speak to the Human Resources pay-and-benefits staff in his branch.

[66] As such, the only direct consequence of the assignment's termination was that the complainant would be returned to his home sector. This is not in itself punitive or otherwise adverse to the complainant within the meaning of s. 147 of the *Code*.

[67] Consequently, any loss that the complainant experienced by returning to his home sector is not directly related to the termination, but rather, is the result of his unfortunate predicament as has been documented earlier in this decision.

[68] I therefore find that even if the assignment's termination constituted a reprisal, it was not of a disciplinary nature with the meaning of s. 147 of the *Code*. As was the outcome in *Vallée*, (at para. 76), I conclude that there were no reprisals against the complainant, and if there were reprisals, I conclude that they were caused by reasons other than the complainant's exercise of rights in the *Code*.

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

*(The Order appears on the next page)*

**V. Order**

[70] The complaint is dismissed.

May 8, 2019.

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