Date: 20190712

Files: 560-02-38707, 39830, and 40269

Citation: 2019 FPSLREB 73

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

BETWEEN

ROMY NINA LARIVIÈRE

Complainant

and

TREASURY BOARD
(Department of Employment and Social Development)

Respondent

Indexed as
Larivière v. Treasury Board (Department of Employment and Social Development)

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

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Martine Sigouin, analyst, Treasury Board of Canada Secretariat

Decided on the basis of written submissions,
filed November 30, 2018, and January 29, March 21, April 18, and July 5, 2019.

(FPSLREB Translation)

I. Introduction

[1] On May 28, 2018, Romy Nina Larivière ("the complainant") filed a complaint (file number 560-02-38707) under s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; "the *Code*" or *CLC*). In it, she alleged that her employer, the Department of Employment and Social Development ("the respondent" or ESDC), contravened s. 147 of the *Code* once in 2015 (December 22, 2015), twice in 2017 (March 17 and June 19, 2017), and three times in 2018 (March 19, April 13, and on or around May 13, 2018), after her first report on February 4, 2015, of incidents of psychological harassment and discrimination of which she was the alleged victim.

[2] On October 25, 2018, during a pre-hearing conference with the parties, the respondent raised a preliminary objection to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") to hear the complaint. At the pre-hearing conference, the parties were invited to make brief submissions of their arguments on the objection so that a decision could be made on that preliminary issue. The respondent's submissions were received on November 30, 2018, and the complainant's on January 29, 2019.

[3] On February 15, 2019, the Board received a second complaint from the complainant (file number 560-02-39830) filed under s. 133 of the *Code*. In that complaint, initially signed on January 31, 2019, she alleged that the respondent had contravened s. 147 of the *Code* other times in 2018 between June 4 and November 29, 2018, inclusively, on the grounds that it had committed acts that were inseparable from and intrinsically linked to those reported in her initial complaint. In the same document, she amended her initial complaint, signed on January 31, 2019, by adding a reference to events that took place on January 31, 2019, and February 6, 2019. The amended version of her complaint is dated February 8, 2019.

[4] A second pre-hearing conference was scheduled with the parties for February 28, 2019, to discuss the next steps in the file numbered 560-02-38707 and the possibility of combining the complainant's second complaint with her first. She briefly attended the conference by telephone but stated that she would not participate and then left the conference.

[5] Therefore, the pre-hearing conference could not be conducted due to the complainant's absence. The respondent was present by phone, and the Board informed it that written instructions would be sent to the parties so that the case would proceed fairly. They were sent to the two parties on that day. Among other things, they dealt with combining the complaints in files 560-02-38707 and 560-02-39830, the schedule for filing additional arguments about the preliminary objection to the Board's jurisdiction to hear the complaints, and the next steps.

[6] The respondent filed its additional arguments on March 21, 2019, and the complainant filed hers on April 18, 2019.

[7] In its additional arguments filed on March 21, 2019, the respondent once again raised a preliminary objection, about the Board's jurisdiction to hear the second complaint. The complainant provided her arguments on April 18, 2019, related to the preliminary objection about the Board's jurisdiction to hear the second complaint.

[8] On April 23, 2019, the complainant filed a third complaint (file number 560-02-40269) under s. 133 of the *Code*. In it, she alleged that the respondent had again contravened ss. 133 and 147 of the *Code* because of new facts that had arisen between February 28, 2019, and April 4, 2019, since her second complaint had been filed.

[9] On May 2, 2019, in accordance with s. 13 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79); "the *Regulations*") and to ensure that the complaints were resolved expeditiously, the Board ordered the three complaints consolidated. In accordance with s. 5 of the *Regulations*, the respondent was also invited to respond to the third complaint, by no later than May 17, 2019. It then informed the Board that it had nothing to add to the submissions it had already filed.

[10] In its instructions to the parties of February 28 and May 2, 2019, the Board informed them that it would rule on the preliminary objections about its jurisdiction to hear the complaints in light of the documentation on file, without holding a hearing.

[11] Therefore, this decision deals with the respondent's preliminary objection to the Board's jurisdiction to hear these complaints.

II. The facts

[12] Based on the correspondence in the file and the parties' submissions, the facts and allegations can be summarized as follows:

- The complainant has been an ESDC employee since April 22, 2014.
- She has never had discipline imposed on her during her ESDC career.
- She has been on leave since March 14, 2017. She submitted medical certificates in support of it, and she was compensated by the insurance company Sun Life Financial Canada ("Sun Life").

[13] The complainant filed her three complaints using form 26 (a complaint under section 133 of the *CLC*). In her first one, under the heading "Concise statement of each act, omission or other matter complained of, including dates and names of persons involved", she wrote that she had been the victim of ongoing objectionable and discriminatory practices in the course of her employment and of attempts at constructive dismissal. Specifically, she stated the following:

> [Translation]
>
> *I allege that on March 19, 2018, and April 13, 2018, and on or around May 13, 2018, I was the victim of an objectionable and discriminatory act and another constructive dismissal attempt. I allege that [the respondent] used an arbitrary method to obtain confidential medical information about me with the goal of finding a legally acceptable reason to terminate my employment relationship and thus eliminate its duty to put accommodation measures in place, considering that similar or comparable acts occurred on December 22, 2015, March 17, 2017, and June 19, 2017. I allege that I have been the victim of ongoing objectionable and discriminatory acts on the job since my first report on February 4, 2015, about incidents of psychological harassment and discrimination, of which I was the victim over a long period (between June 2014 and December 2017). See the document entitled "QUEST 3 & 4", attached (by XpressPost courier PG 418 128 388 CA). (20 pages)*

[14] In Appendix A, which was attached to her first complaint form, the complainant alleged in part as follows:

> [Translation]
>
> …

> *Consequently, I allege that I was the victim of an attempt at constructive dismissal by the employer Employment and Social Development Canada, considering that the* ***act committed on March 19, 2018, by Sun Life Financial Canada, namely, requiring me to undergo a psychiatric examination on April 13, 2018, was without doubt an implicit direction from the employer Employment and Social Development Canada. In all probability, its goal was to find "a legally acceptable reason" allowing the above-mentioned [the respondent] to terminate the employment relationship or to not renew my employment contract*** *[page 8 of 20 of the complaint documents dated May 20, 2018].*
>
> [Emphasis in the original]

[15] The corrective measures that the complainant requested are described in the appendix to the complaint and include damages of $482 000 for hardship suffered due to the respondent's acts dating from June 30, 2014.

[16] In its response to the first complaint, the respondent submitted that nothing in the complainant's allegations indicated that it had done anything punitive against her. The alleged acts referred to a Sun Life request. In addition, according to the respondent, in her submissions, the complainant tried to link events from outside the 90-day time limit set out in the *Code*. It explained that she had been on leave since March 14, 2017. After she submitted a doctor's notes, Sun Life compensated her. The respondent argued that it could not have contravened s. 147, as no discipline was imposed on the complainant for refusing to work. She was not at work when the alleged acts would have been committed.

[17] In her second complaint, under the heading "Concise statement of each act, omission or other matter complained of, including dates and names of persons involved", the complainant wrote that between June 4 and November 29, 2018, inclusively, the respondent committed acts that were "[translation] … inseparable and intrinsically linked to the acts reported …" in her first complaint. Specifically, she wrote the following:

> [Translation]
>
> *I allege that the employer ESDC committed objectionable acts between June 4, 2018, and November 29, 2018, inclusively, in contravention of the CLC, including s. 133. Those acts are inseparable and intrinsically linked to the acts reported in my*

> *complaint (560-02-38707). And the objective is to avoid its duty related to my right to a priority appointment under the PSER. Hence, its acts constitute an attempt at a constructive dismissal, namely, to "consolidate" its initial attempt at a constructive dismissal. See document "Appendix A". See my complaint [in file] 560-02-38707 *See document "Appendix B" [5-page document] … February 8, 2019*

[18] In Appendix B, attached to her complaint form, the complainant wrote in part as follows:

> [Translation]
>
> …
>
> *This document AMENDS my complaint dated January 31, 2019, given the occurrence of new facts (objectionable acts) and the occurrence of new facts between* ***January 31, 2019, and February 6, 2019.***
>
> [Emphasis in the original]

[19] The complainant also accused the respondent of a delay filling out form 1940 of the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), entitled, "[translation] Employer notice and request for reimbursement".

[20] The corrective measures that she requested were described in the appendix to her complaint and included damages for hardship suffered from the respondent's acts.

[21] In her third complaint, under the heading "Concise statement of each act, omission or other matter complained of, including dates and names of persons involved", the complainant wrote the following: "[Translation] New complaint under sections 133 and 147 of the Canadian Labour Code / Linked with other complaint files already received by the FPSLREB. See file #s - see 'Appendix C' attached and att. # XR 560-02-38707 and 560-02-39830."

[22] Then, under the heading "Steps that have been taken by or on behalf of the complainant for the resolution of the act, omission or other matter giving rise to the complaint", the complainant wrote the following:

> [Translation]
>
> *New facts/acts committed from February 28, 2019, to*

April 4, 2019

See [file]: # XR 560-02-38707

See [file]: # 560-02-39830

[23] In Appendix C attached to her complaint form, the complainant wrote in part as follows:

> [Translation]
>
> *I believe that it is legitimate to file this third (3rd) complaint, given the occurrence of new facts (acts) new objectionable Acts and that those new acts occurred between* ***February 28, 2019, and April 4, 2019,*** *inclusively, and that they are intrinsically linked and inseparable from the objectionable acts reported previously in my (2) current complaints.*
>
> *But also consider that those acts have a direct detrimental effect on my general state of health and that the continuation and repetition of similar acts can or could irrevocably have as a consequence a physiological consequence that the entire anatomo-physiological [sic] system (human body) cannot effectively suffer. This is about the effect of being subjected to extreme stress for a long time.*
>
> *In my case, we are talking about a period of over twenty-six (26) [months] if I use March 14, 2017, as the start date. While in reality, the true total period during which I have been subjected to extreme stress has existed since at least February 2015, or for more than fifty-one (51) months, which, even in a war zone, is unacceptable.*
>
> *I allege that I have been the victim of reprisals by the employer Employment and Social Development Canada - Service Canada, under sections 133 and 147 of the Canada Labour Code. And under sections 125(1)(z.16) and 128 of the Code.*
>
> *I allege that I have been the victim of ongoing and repeated workplace violence over the long period specified in my three (3) complaints addressed to the Board, under Part XX of the Canada Occupational Health and Safety Regulations (COHSR).*
>
> …
>
> ***1. Act committed on February 28, 2019****: Sun Life - the COHSR … administrator arbitrarily cut the long-term disability benefits in the form of half of my long-term disability benefits, which are already 70%. That put me in a state of shock that is clearly understandable…*
>
> …

> ***Further to question 5 of the Federal Public Sector Labour Relations and Employment Board (FPSLREB) form*** *[Corrective action sought under section 134 of the Canada Labour Code]:*
>
> *1. Given the evidence gathered that proves, in all probability, the belligerent, vile, and intentional nature of the acts committed;*
>
> *2. Given that ongoing and repeated objectionable acts committed against me by the employer were perpetrated over a period of* ***fifty-one (51) months****, beginning on February 5, 2015, and up to April 22, 2019;*
>
> *…*
>
> *I request as remedy:*
>
> *23. Damages and interest from the employer Employment and Social Development Canada for hardship resulting from objectionable, belligerent, and illegal acts committed against me.*
>
> *…*
>
> *34. I request that I be transferred or reassigned with a change to my employment status, namely, I be appointed a permanent employee in a different department, organization, or Crown corporation of the Government of Canada ….*
>
> [Emphasis in the original]

[24] On July 5, 2019, she sent the Board "[translation] Additional information", which she titled "Appendix D". In it, she stated in part as follows:

> [Translation]
>
> *1. First and foremost, I believe that it is legitimate to file this document, especially considering:*
>
> *2. That the other official steps taken with different federal organizations since* ***May 12, 2017,*** *to date, which enable anyone to confirm or validate the truth of my allegations, not least through the abundance of the evidence gathered and the commission of certain acts directly linked to that evidence, namely, excessive redaction.*
>
> *3. In addition, this evidence establishes the causal links between each act alleged in my (3) complaints addressed to the FPSLREB, which are all intrinsically linked to each other and are de facto inseparable, and that meet all the characteristics detailed on pages 5 to 14 of my document entitled "Complainant's written submissions in response to the responding party's preliminary objections" sent on January 28, 2019, namely:*
>
> - *The three (3) elements of the analysis*
> - *The facilitating factors*

> · *The four (4) common criteria*
>
> · *The common origins*
>
> · *The aggravating factors.*
>
> *4. Due to the extent of the damages to me resulting from the objectionable acts of which I have been the victim, it is reasonable to believe that they can or could cause or risk causing serious or even fatal illness or injury (s. 148 Canada Labour Code), as mentioned in my third (3rd) complaint with file number* ***560-02-40269.*** *Note that this point was not mentioned in the two (2) preceding complaints (****560-02-38707*** *and* ***560-02-39830****).*
>
> …
>
> [Emphasis in the original]

[25] In her additional information, among other things, the complainant then reported the acts or omissions of her union, Sun Life, the respondent, the Public Sector Integrity Commissioner, and the Prime Minister's Office. In conclusion, she stated the following:

> [Translation]
>
> ***Conclusion***
>
> *In conclusion, the evidence gathered, easily consisting of 10 000 to 11 000 pages, in addition to evidence in other formats, inescapably shows that I have been subjected to the worst form of violence one can inflict on a human being; the ongoing and repeated psychological violence of more than four (4) consecutive years, and it still goes on and on. Should I write you a daily news headline?*
>
> …

[26] On July 11, 2019, the respondent informed the Board that it had nothing to add to the responses it had submitted earlier.

III. Summary of the arguments

[27] The respondent raised a preliminary objection to the Board's jurisdiction to hear these complaints. It stated that the Board should dismiss them for lack of jurisdiction, for two main reasons: 1) they are untimely because the complainant knew about the first acts beginning in 2015, and 2) as an alternative, even if the Board rules that they were not untimely (due to the events dated in 2018 and 2019), ss. 133 and 147 are inapplicable on first review.

[28] According to the respondent, the complaints are untimely. Section 133(2) of the *Code* stipulates the following:

> ***133 (2)*** *The complaint shall be made to the Board not later than ninety 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.*

[29] The respondent emphasized that the period set out in s. 133(2) is clear: a complaint must be filed within 90 days after the day on which the person knew or ought to have known of the acts of reprisal. It stated that as soon as a person learns of acts of reprisal, he or she cannot wait more than 90 days before filing a complaint. Otherwise, the complaint should be dismissed in its entirety, as it is untimely.

[30] The respondent referred me to *Sainte-Marie v. Canada Revenue Agency*, 2009 PSLRB 35. In that decision, at paragraph 57, the Board stated that it "… has no discretion to extend the 90-day time limit. The only thing it can assess is when the complainant knew or ought to have known of the action or circumstances."

[31] The respondent stated that "[translation] the period in which to file a complaint under section 133 has been expired for years, since the complainant claims that several acts of reprisal by the employer allegedly took place beginning on February 4, 2015". Specifically, at the heart of her concerns and allegations is a conversation that she supposedly had with her team leader in February 2015. Then, in her complaint, she refers to a letter dated February 4, 2015, which is attached to her complaint and in which she describes her reprisals allegation.

[32] The respondent stated that since the complainant described her reprisals allegation in that letter, she could not claim that the time did not begin to run then. Therefore, the respondent maintained that the 90-day period began to run on February 4, 2015.

[33] The respondent stated that the complainant's addition of allegations to her first complaint about incidents on March 19, April 13, and May 13, 2018, of allegations in her second complaint about incidents from June 4 to November 29, 2018, and from January 2019 to February 2019, and of allegations in her third complaint about incidents from February 28, 2019, to April 4, 2019, were nothing but her strategy to try

to meet the time limit set out in s. 133(2). By doing so, she tried to get around the principle set out at paragraph 68 of *Sainte-Marie*, namely, "… the CLC cannot be used after the fact to pursue proceedings against the employer." It is clear that she knew of the first alleged act since February 4, 2015.

[34] In any event, according to the respondent, on their face, the allegations about incidents from 2018 and 2019 cannot constitute reprisals under s. 147 of the *Code*.

[35] The respondent submitted that it took no steps contrary to s. 147 of the *Code* and that there is no foundation for a complaint under s. 133 of the *Code*. It added that if the Board finds that the complaints were timely because of events in 2018 and 2019, on their face, ss. 147 and 133 are inapplicable.

[36] Under those sections, the Board's role consists of determining whether the complainant was the subject of reprisals because she exercised her rights under Part II (Occupational Health and Safety) of the *Code*. Therefore, it must first rule on its jurisdiction before hearing the complaints on their merits.

[37] The respondent argued that as the Board stated in *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52 at para. 64, as follows, a complainant must demonstrate that:

> *1. he exercised his rights under Part II of the CLC (section 147);*
>
> *2. he suffered reprisals (sections 133 and 147 of the CLC);*
>
> *3. these reprisals are of a disciplinary nature, as defined in the CLC (section 147); and*
>
> *4. there is a direct link between his exercising his rights and the actions taken against him.*

[38] In its written submissions, the respondent illustrated how the complainant failed to meet those four criteria.

[39] First, in support of its statement that she did not exercise her rights under Part II of the *Code*, the respondent argued that if she felt that she had asserted a right under Part II of the *Code*, she seemed to be indicating it as follows:

> [Translation]

> *… I allege that I have been the victim of ongoing objectionable and discriminatory acts on the job since my first report on February 4, 2015, about incidents of psychological harassment and discrimination, of which I was the victim over a long period (between June 2014 and December 2017)….*

[40] However, the complainant did not file a complaint of violence under Part XX (Violence Prevention in the Work Place) of the *Canadian Occupational Health and Safety Regulations* (SOR/86-304).

[41] The respondent added the following:

> [Translation]
>
> *In Baun v. Statistics Survey Operations, 2018 FPSLREB 54, the Board found that section 147 could not be applied, since the complainant had not formally asserted her right under the CLC, and that she had the burden of proving that she had asserted her rights.*

[42] The respondent also added that "[translation] … as in Baun, the Board has no jurisdiction over the complaint since the complainant did not assert her rights under Part II of the Code".

[43] Second, in support of its statement that the complainant did not suffer reprisals, the respondent argued that even if the Board deems that the allegations of recent facts made in the complaints were proven, on their face, those allegations do not constitute reprisals. Therefore, they cannot constitute a breach of s. 147 of the *Code*.

[44] With respect to the first complaint, the reprisals allegations dating to 2018 are the following: 1) on March 19, 2018, Sun Life imposed a psychiatric examination for April 13, 2018, 2) the expert psychiatrist allegedly asked "[translation] irrelevant questions" during the April 13, 2018, psychiatric examination, and 3) on May 13, 2018, the complainant learned that her "[translation] personal effects had been packed up and stored". On that day, she found herself without a workstation.

[45] The respondent argued that with respect to the first two allegations, they were not its acts but those of Sun Life and the psychiatrist. Therefore, for the respondent, they cannot be measures prohibited by s. 147 of the *Code* as reprisals for exercising a right provided by the *Code*. They are third parties, over whom the Board has no

jurisdiction. In addition, the issues (Sun Life's request and the psychiatric assessment) are linked to disability insurance benefits concerns, which are not part of the Board's mandate.

[46] With respect to the third allegation, the respondent argued that it is very common to free up the workstations of employees on prolonged leave, given that workspace is limited. New workstations are then assigned to the employees when they return to work.

[47] With respect to the second complaint, the respondent noted that the reprisals allegations were the following, according to its interpretation:

> [Translation]
>
> *The complainant alleges (para 35 of Appendix A) psychological harassment by the employer from the simple fact that it sent her standard letters dealing with the resolution protocol for sick leave without pay (SLWP).*

[48] Then, the respondent added the following, about the letters, to paragraphs 29 and 30:

> [Translation]
>
> *On its face, this allegation is not a reprisal. Therefore, it cannot constitute a breach of section 147 of the CLC.*
>
> *With respect to that allegation, the respondent has attached as appendices letters of the type sent to Ms. Larivière with respect to her sick leave without pay (SLWP), i.e., (i) Appendix "A": the July 9, 2018, letter referring to the established departmental process for managing sick leave without pay (SLWP); (ii) Appendix "B": the October 22, 2018, letter outlining the resolution protocol for sick leave (SLWP) of more than 18 months; (iii) Appendix "C": Appendix A: information on sick leave without pay; and (iv) Appendix "D": Appendix B: excerpt from the Directive on Leave and Special Working Arrangements.*
>
> *Reading them will make it clear that they are standard information letters sent to employees on sick leave without pay (SLWP) and not, as the complainant claims, reprisals against her.*
>
> …

[49] The respondent noted that in Appendix A to her first complaint and in her second complaint, the complainant also indicated that its reason was "[translation] to

deprive [her] of [her] right to priority appointment and to avoid … its obligations … under the *Public Service Employment Act (PSEA)* and … section 7 of the *Public Service Employment Regulations (PSER)*". The respondent added that she associated that with an attempt at constructive dismissal under s. 133 of the *Code*.

[50] The respondent stated that s. 7 of the *PSER* provides that an employee has a right to a priority appointment if "… within five years after the day on which the employee became disabled, the employee is certified by a competent authority to be ready to return to work on the day specified by the authority … the day specified is within five years after the day on which the employee became disabled."

[51] Therefore, the respondent noted, one condition is that the competent authority must certify that the employee is ready to return to work and must specify the return day.

[52] The respondent added the following: "[Translation] The informational letters list the different options, including returning to work 'if your doctor deems you ready to return'". Thus, the fact that it communicated with the complainant cannot be considered psychological harassment. The informational letters merely stated that one option was to return to work if a doctor has deemed the person ready to return.

[53] With respect to how the respondent filled out the CNESST form and for which the complainant alleged another objectionable act, the respondent stated the following: "[Translation] As indicated by Appendix E, when filling out the form, the employer merely explained the nature of the letters sent to the complainant." It submitted that no reprisals or objectionable act occurred.

[54] Third, in support of its statement that the complainant did not show that the reprisals she was allegedly subjected to were of a disciplinary nature as defined in the *Code* (s. 147), the respondent reiterated that the allegations do not meet *prima facie* the criteria of ss. 133(1) and 147 of the *Code*. The complainant was not dismissed, suspended, laid off, or demoted, and no one imposed a financial or other penalty on her (see *Leary v. Treasury Board (Department of National Defence)*, 2005 PSLRB 35 at paras. 70 and 71).

[55] Fourth, in support of its statement of no direct link between the exercise of the complainant's rights and the measures she supposedly suffered, the respondent argued that there were no reprisals but that even if there were some, she did not show a direct link between the exercise of her rights and the measures she suffered. Her report of psychological harassment and the alleged acts are not linked.

[56] Finally, the respondent stated that the complainant used a complaint under s. 133 to attempt to cover as many issues as possible related to problems with her accommodation needs and her employment and disability insurance issues, which she had been facing for the past four years.

[57] For all those reasons, the respondent stated that ss. 147 and 133 of the *Code* do not apply. Therefore, it requested that the Board dismiss the complaints for lack of jurisdiction.

[58] The complainant responded in writing to the respondent's preliminary objections. In her first response, on January 29, 2019, she mentioned that she had been the victim of psychological harassment and discrimination beginning on or about June 30, 2014. She was on leave between February 5 and 26, 2015, and then between March 19 and June 17, 2015. On August 5, 2015, she suffered an employment injury. She has been on leave since March 14, 2017, due to a relapse. The Occupational Health and Safety Board found in her favour on September 24, 2015.

[59] In Part I of her first response, the complainant argued that the acts that the respondent committed were all "[translation] equally objectionable, aggravating, or harmful". In particular, she stated the following:

> [Translation]
>
> *Part I*
>
> …
>
> *4. The perpetration of the objectionable acts, by commission or omission, shows what is called the* ***"domino effect"****. In that sense, each act committed upstream influenced the next act, and each act committed downstream was directed by its predecessor;*
>
> *5. The perpetration of the objectionable acts, by commission or omission, constitutes an indivisible sequence coated in a harmful*

> *nature. And in that sequence, the acts committed are de facto inseparable and intrinsically linked together, and;*
>
> *6. Due to the impressive number of laws that the employer infringed [she listed 16 laws, codes, regulations, policies, and directives in her response] Employment and Social Development Canada, by perpetrating the objectionable acts, by commission or omission, in summary, this file could redefine the workplace violence criteria.*
>
> …
>
> [Emphasis in the original]

[60] In Part II of her response, the complainant stated the following:

> [Translation]
>
> *Part II*
>
> …
>
> *1. The evidence gathered proves that the objectionable acts committed meet the following three points …*
>
> *(A) One or more **Operating procedures** (that is, the **"How"**) or Modus operandi (MO) or methods;*
>
> *(B) One or more **Opportunities** or **Contexts** (that is, the **"When"**), and;*
>
> *(C) A **Motive** (that is, the **"Why"**).*
>
> [Emphasis in the original]

[61] In Part III of her response, the complainant addressed the following topics: 1) time continuum (continuation), 2) repetition, 3) early stages, and 4) origin. She provided definitions for these terms and for the term "premeditation". She specified the following:

> [Translation]
>
> …
>
> *1.1 By adding the four (4) mentioned criteria; i.e.: the continuation (time continuum), the repetition, early stages with a shared basis and a common origin (common point of origin), it is possible to conclusively and unequivocally establish the presence of the aggravating factor called "Premeditation".*
>
> …

[62] In Part IV of her response, the complainant cited case law excerpts from the Quebec sphere of jurisprudence on psychological harassment in the workplace.

[63] In her second response on April 18, 2019, she mentioned that over the years, she had been subjected to psychological harassment, discrimination, and intimidation by the respondent and Sun Life. She stated that she had been the victim of several disguised disciplinary measures, including the following: 1) an arbitrary and illegal change to her PER 14-15 (performance evaluation), 2) an action plan on top of a talent management plan, 3) the removal of her application from the list of candidates for the "[translation] local ergonomics guides" training, 4) ignoring her application to be the floor officer on the emergency measures team, and 5) being deprived of the possibility to acquire professional experience connected to her university education, accreditations, skills, and experience.

[64] The complainant also described her permanent disability and provided examples of what according to her represented the discrimination that she had suffered. Several pages listed facts alleged to be either random or premeditated attacks on her reputation and psychological harassment.

IV. Reasons

[65] The complaints were submitted under s. 133 of the *Code*, alleging a violation of s. 147 by the respondent. Section 133(1) reads as follows:

> ***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.*

[66] Section 147 of the *Code* reads as follows:

> ***147*** *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial 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*
>
> ***(a)*** *has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*

> ***(b)*** *has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or*
>
> ***(c)*** *has acted in accordance with this Part of has sought the enforcement of any of the provisions of this Part.*

[67] The complainant did not specify the provision or provisions of s. 147 that might be relevant to the allegations in her complaints.

[68] As the Board stated in *Babb v. Canada Revenue Agency*, 2012 PSLRB 47 at para. 5 (referencing *Gaskin v. Canada Revenue Agency*, 2008 PSLRB 96): "… preliminary issues may be determined based on the record, without convening an oral hearing."

[69] To support its objection to the Board's jurisdiction, the respondent invited the Board to focus on the two following issues: 1) Are the complaints untimely and thus outside the Board's jurisdiction? 2) Should the Board dismiss the complaints without convening an oral hearing because the essential elements of a complaint filed under s. 133 of the *Code* are not present in them?

A. Are the complaints untimely and thus outside the Board's jurisdiction?

[70] The complainant had 90 days to file her complaints, in accordance with s. 133(2) of the *Code*, which reads as follows:

> ***133 (2)*** *The complaint shall be made to the Board not later than ninety 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.*

[71] That time limit is mandatory, and no authority has the power to extend it (*Larocque v. Treasury Board (Department of Health)*, 2010 PSLRB 94). Thus, my jurisdiction to hear the complaints is limited to a review of the respondent's acts that allegedly contravened s. 147 of the *Code* and that took place, or about which the complainant knew or should have known, within the 90 days preceding filing the complaints. The 90-day period preceding May 28, 2018 (the filing of her first complaint), goes to February 27, 2018, the period preceding February 15, 2019 (the filing of her second complaint), goes to November 17, 2018, and the period preceding April 23, 2019 (the filing of her third complaint), goes to January 23, 2019.

[72] The respondent's acts giving rise to the complaints are described in section 3 of each complaint form on file with the Board. The dates on which the acts were allegedly committed are also specified in that section.

[73] As mentioned in *Babb*, at para. 10, written complaints must clearly state the acts committed and when they were committed.

[74] Were any of the acts in the complainant's allegations committed within the 90 days preceding the filing of the complaints, and did she know of them? If the answer to those questions are in the affirmative, then the acts were timely. Otherwise, they were untimely.

[75] What acts gave rise to the complaints? A review of the first complaint indicates that the respondent allegedly did not provide the complainant with an objectively valid reason for ending her employment. According to her, it contravened s. 147 of the *Code* in 2015, 2017, 2018, and 2019 because of her report of February 4, 2015, of incidents of psychological harassment and discrimination of which she was the alleged victim, as well as several incidents that supposedly constituted reprisals. However, she did not specify the link between the alleged termination and the exercise of rights conferred on her by the *Code*. Nevertheless, she described in detail incidents going back to 2014 and 2015. She also insisted on the fact that her complaint was filed under nine laws, regulations, policies, or other texts, namely, the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6), the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c. 11, the *Criminal Code* (R.S.C., 1985, c. C-46), and her collective agreement. One part of her complaint was dedicated to describing problems with her union.

[76] A review of the second complaint indicates that the respondent allegedly continued to commit acts concurrently, over time, namely, gathering medical information about the complainant on November 29, 2018, and the alleged attempt to deprive her of her right to receive compensation from the CNESST, and that it tried to avoid its duty related to her right to priority nomination under the *PSER*. She specified that it acted to "consolidate" its initial attempt at constructive dismissal.

[77] A review of the third complaint indicates that on February 28, 2019, Sun Life allegedly arbitrarily cut the complainant's long-term disability benefits in half, which came as a shock to her. She alleged that it was a reprisal and psychological harassment and that it continued until April 4, 2019.

[78] In my opinion, some alleged facts in the complaints occurred within the 90 days preceding their filing, namely, 1) the March 19, 2018, request for a psychiatric examination, 2) the psychiatric examination appointment of April 13, 2018, 3) the storage of the complainant's personal effects on May 13, 2018, 4) the respondent's request for a medical certificate and the allegation about depriving her of her right to receive compensation from the CNESST on November 29, 2018, and 5) the cuts to the disability benefits on February 28, 2019.

[79] Those events are timely. Nevertheless, the other events that occurred on different dates since 2015, specifically, on December 2, 2015, March 17, 2017, June 19, 2017, and June 4 to November 16, 2018, are untimely.

[80] Therefore, with respect to the timely events, it is appropriate to examine whether, by taking the allegations that gave rise to the complaints as proven, they reveal the existence of an arguable case that the respondent contravened s. 147 of the *Code*.

B. Do the allegations that gave rise to the complaints reveal the existence of an arguable case that the respondent contravened s. 147 of the *Code*?

[81] Employees may file complaints under s. 133 of the *Code* on the grounds that their employers adopted measures contrary to s. 147 of the *Code*.

[82] The established criterion for deciding whether a contravention of s. 147 of the *Code* has occurred was stated at paragraph 64 of *Vallée*. The complainant must demonstrate the following:

a. that she exercised her rights under Part II of the *Code*;

b. that she suffered reprisals;

c. that the reprisals were of a disciplinary nature, as defined in the *Code*; and

d. that there is a direct link between the exercise of her rights and the measures she suffered.

[83] The essential issue to be determined is the following: Do the allegations in support of the complaints relate to violations of the prohibitions set out in s. 147 of the *Code*? I find that they do not, for the following reasons.

[84] There is no link between the complainant's many allegations and the prohibitions set out in s. 147 of the *Code*. Specifically, she did not refer to the exercise of an employee's rights in Part II of the *Code* or to reprisals of a disciplinary nature, as defined in the *Code*.

[85] Specifically, the complainant complained about her difficulties with her disability insurance, having to submit to a psychiatric examination, the storage of her personal effects, and her compensation with the CNESST. In short, she translated a profound bitterness towards the respondent into issues related to her employment. According to her, it had not adequately ensured her accommodation in the past. Yet, even if the evidence about recent events that occurred in 2018 and 2019 proves true, this evidence does not refer to violations of the prohibitions set out in s. 147 of the *Code*.

[86] I must specify that a complainant cannot make allegations without linking them to the circumstances set out in s. 147 of the *Code*. This principle was stated in particular in *Gaskin*, at para. 57, as follows:

> *[57] It is quite possible to lose sight of the essential subject of the complaint when reviewing the many allegations that the complainant makes against the employer and against public officials. As a self-represented party in this proceeding, the complainant need not be expected to frame the cause of his complaint in unequivocal and precise terms. On the other hand, he does have a responsibility to make the basis of his complaint sufficiently clear to the Board so that it can understand the nature of his case and so that the respondent can know the allegations against which it must defend.*

[87] I also acknowledge that complainants who represent themselves are not obligated to express the reasons for their complaints in precise and unequivocal terms. I also acknowledge the complainant's significant effort and profound dedication to presenting her case. However, the Board has no jurisdiction to rule on the issues that

she raised. In the hundreds of pages that she filed with the Board, she accused the respondent and Sun Life, among others, of acts that cannot reasonably come within the ambit of the parameters of s. 147 of the *Code*.

[88] Therefore, I must conclude that I do not have jurisdiction to deal with these complaints.

[89] Thus, I uphold the respondent's preliminary objections to the complaints submitted under s. 133 of the *Code* for the reason that the allegations in support of these complaints do not reveal the existence of an arguable case that the respondent contravened s. 147 of the *Code*.

[90] Since I have allowed the objections, I dismiss the complaints.

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

(The Order appears on the next page)

V. Order

[92] The complaints are dismissed.

July 12, 2019.

FPSLREB Translation

Nathalie Daigle,
a panel of the Federal Public Sector
Labour Relations and Employment Board