

Date: 20191219

File: 560-02-75

Citation: 2019 FPSLREB 127

*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

ZABIA CHAMBERLAIN

complainant

and

TREASURY BOARD

(Department of Human Resources and Skills Development)

Respondent

Indexed as

Chamberlain v. Treasury Board (Human Resources and Skills Development)

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

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

For the Complainant: Herself

For the Respondent: Caroline Engmann, counsel

Decided on the basis of written submissions,
filed April 4 and 26, 2019.

REASONS FOR DECISION

I. Background

[1] On February 15, 2011, Zabia Chamberlain, the complainant, filed a complaint with the Public Service Labour Relations Board (PSLRB) alleging a violation of s. 133 in Part II of the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*). On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the PSLRB. On June 19, 2017, the PSLREB's name was changed to the Federal Public Sector Labour Relations and Employment Board ("the Board").

[2] The complaint comprised 22 pages of text and 103 pages of appendices. It has the following nine aspects (I omitted the random bold text appearing in the original):

1- I am wrongfully discharged, unjustly dismissed, suspended and held at forced resignation.

2- I am held under perpetual financial threat and penalty - blocked unlawfully from proper compensation, still living under non-lawful threat of federal requirement that I non-lawfully sign the "third party" form, and held to pay-back + even hold-back p/of lower wage losses while I pursue proper compensation for proven harassment/injury inflicted.

3- Fundamental Charter Rights (s. 7, 12, 15, s. 26, 27, 28) are wholly violated by the violation of CLC and CHRA Rights.

4- Sexually-discriminating penalty to my health, strength/fear, dignity, privacy + life in being held to pleading for legal duties under CHRA + CLC part 2 about aggressive + sexually assaultive harassment with yet another/new HR DG and new DM of a department I can not return to.

5- First-time witnesses information to me 3rd week November impose lasting penalty + threat to health, strength/fear. Hearing + reading witness accounts of the Executive Management- known + ignored violent harassment has been really a terrible penalty to my health.

6- Witness + Co-worker information and TBS + Dept/HR information within recent 90 days make it known to me for the first time that I am held under threat to same Department + senior Executives who tampered with procedures, perpetuated, are negligent on, caused/allowed, and/or responsible for intimidating others on shameful violence.

7- First-time witness information + TBS Dec 6th 2010 email clearly indicate that procedural duty of care + protection + investigation

under both TBS harassment policy + CLC part 2 were + are tampered with

8- It was clear December 2010 that TBS/Employer acted in bad faith in a lengthy, dishonest, disciplining, threatening, financially costly PSLRB mediation process it had accepted June 18, 2009 and again January 8, 2010 - allowing the mediation (or using it) to intimidate and/or set up the wrongful dismissal/discharge/suspension of me.

9- New reprisal of lasting penalty to my health and strength/fear of privacy documents I received + sorted through October 2010 to late January 2011.

[Sic throughout]

[3] These complaints were filed while earlier complaints, carrying file numbers 560-02-58, 560-02-65, 560-02-66, and 560-02-68, were awaiting resolution. Given the (then) ongoing proceedings in those four complaints, on March 4, 2011, the PSLRB informed the complainant that it would hold the present complaint (file no. 560-02-75) in abeyance, pending the outcome of the other four. The Registry wrote to the complainant as follows:

A Member of the Public Service Labour Relations Board has conducted a preliminary review of your complaint. He has directed me to inform you that the Board has decided to hold the complaint in abeyance until there is a final decision in PSLRB file Nos. 560-02-58, 560-02-65, 560-02-66, and 560-02-68 currently before Board Member Filliter (see 2010 PSLRB 130). Once that decision is issued, the Board will be in a better position to determine whether your new complaint raises any issues that are not linked to the matters before Board Member Filliter and/or that are not essentially disposed of by his determination.

[4] The four files that were before Board Member George Filliter alleged 140 illegal reprisals under the *CLC*. All these allegations were ultimately dismissed in a 1023-paragraph decision (see 2015 PSLREB 29) issued after a protracted hearing of more than 60 days, held from June 2011 to May 2014. An application to the Federal Court of Appeal to appeal the decision in 2015 PSLREB 29 was dismissed due to delay.

[5] File number 560-02-75 contained no correspondence of any kind following the issuance of 2015 PSLREB 29 on March 24, 2015. Following a review of file number 560-02-75, an invitation was extended to the parties to comment on whether the allegations in it had already been addressed by the decisions rendered on the similar

allegations in the files numbered 560-02-58, 560-02-65, 560-02-66, and 560-02-68.

The invitation was worded as follows:

...

The applicant sought judicial review on the decisions issued in those complaints and it appears that the judicial review proceedings are complete.

The Board directs the parties to advise whether the decisions of the Board and of the Federal Court of Appeal have decided the issues raised in this complaint and, if not, to identify precisely and concisely the allegation(s) in that complaint that remain outstanding.

...

[6] On April 4, 2019, the respondent replied as follows:

...

The referenced complaint was filed on February 14, 2011, alleging violations of certain provisions of the Canada Labour Code. In addition to a 125-page summary, the complainant indicated at section 6 of the complaint form that other matters relevant to the complaints were: "August 10, 2009 response to PSLRB; TBS/Employer Volumes + Letters for 566-02-2784 + 560/02/58/65/66/68; Feb 2009 lawyer email and Dec 2008 grievance." A perusal of the 125-page summary attached to the complaint clearly shows that the events and matters underlying complaint number 560-02-75 are the same events addressed in Board Member Filliter's decision dated March 24, 2015, Chamberlain v. Treasury Board (Department of Human Resources and Skills Development), 2015 PSLREB 29.

It is the employer's position that the issues raised in complaint number 560-02-75 have been completely addressed by the Board in the afore-mentioned [sic] Board decision.

[7] On April 26, 2019, the complainant filed her reply, consisting of 17 single-spaced pages. Section 1 of her submission is a lengthy narrative on incidents that took place after 2015 PSLREB 29 was issued. Nothing in this section of her reply touches upon whether the issues raised in file number 560-02-75 are substantially the same as the issues raised in the files numbered 560-02-58, 560-02-65, 560-02-66, and 560-02-68 and addressed in 2015 PSLREB 29.

[8] Section 2 is entitled "Unaddressed Penalties and Reprisals" and pertains to her not having received the remedial action she sought in the hearing before Board Member Filliter and to her issues with the decision in 2015 PSLREB 29. Nothing in this

section addresses whether the issues raised in file number 560-02-75 are substantially the same as the issues raised in the files numbered 560-02-58, 560-02-65, 560-02-66, and 560-02-68 and addressed in 2015 PSLREB 29.

[9] Section 3 is entitled “Relevant Factual Background” and is a narrative of the facts that gave rise to the hearing conducted by Board Member Filliter, as well as commentary on interim and preliminary decisions he made in the course of that hearing. Nothing in this section addresses whether the issues raised in file number 560-02-75 are substantially the same as the issues raised in the files numbered 560-02-58, 560-02-65, 560-02-66, and 560-02-68 and addressed in 2015 PSLREB 29.

[10] I have read 2015 PSLREB 29. I have also read the complainant’s 125-page complaint filed on March 4, 2011. I find that the nine allegations raised in file number 560-02-75 are substantially the same as some of the issues raised by the complainant in the files numbered 560-02-58, 560-02-65, 560-02-66, and 560-02-68. All of these issues were ultimately addressed in 2015 PSLREB 29.

[11] According to the legal principle of *res judicata*, which means a matter has already been decided, a party should not be allowed to relitigate matters that have been settled by a final decision (see *Bishop-Tempke v. Treasury Board*, 2017 PSLREB 3 at paras. 30-31). Accordingly, given that the same issues involving the same parties were already decided in a decision that was final, I find that the matters being raised in file number 560-02-75 are *res judicata*.

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

(The Order appears on the next page)

II. Order

[13] The complaint is dismissed.

December 19, 2019.

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