Date: 20200526

File: 560-34-38687

Citation: 2020 FPSLREB 57

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

CRAIG WOOD

Complainant

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Wood v. Canada Revenue Agency

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: Amy Kishek

For the Respondent: Kieran Dyer

Decided on the basis of written submissions,
filed October 16, November 1, 7, and 22, and December 3, 2019.

REASONS FOR DECISION

I. Complaint before the Board

[1] Craig Wood ("the complainant") is an employee of the Canada Revenue Agency ("the employer"). On May 17 and 18, 2017, he exercised his right to refuse dangerous work under s. 128(1) of the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*), which reads in part as follows:

> ***128(1)*** *Subject to this section, an employee may refuse to … work in a place … if the employee while at work has reasonable cause to believe that*
>
> …
>
> ***(b)*** *a condition exists in the place that constitutes a danger to the employee ….*

[2] Ultimately, the employer found his refusal to work unfounded because there was no danger, and on October 4, 2017, it imposed a five-day suspension on him as a disciplinary action for refusing to attend work on May 17 and 18, 2017.

[3] On October 27, 2017, the complainant filed a grievance with respect to the disciplinary action. The employer issued its final-level reply denying the grievance on May 9, 2018.

[4] On May 31, 2018, the complainant filed a complaint of reprisal under s. 133 of the *CLC*, which reads in part as follows:

> ***133 (1)*** *An employee … who alleges that an employer has taken action against the employee in contravention of section 147 may … make a complaint in writing to the Board of the alleged contravention.*

[5] Section 147 of the *CLC* deals with reprisals. It reads in part as follows:

> ***147*** *No employer shall … take any disciplinary action against an employee because the employee*
>
> …
>
> ***(b)*** *has provided information … regarding the conditions of work affecting the health or safety of the employee ….*

[6] I was appointed to hear this matter, and on October 11, 2019, I requested submissions from the parties on the issue of timeliness referred to by the employer, citing s. 133(2) of the *CLC*, 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.*

[7] I advised the parties of my concern that the complaint seemed to have been filed over seven months after the incident, which was outside the 90-day time limit. I referred them to *Sainte-Marie v. Canada Revenue Agency*, 2009 PSLRB 35, which held that unlike a grievance under the *Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*), as the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*) was known at that time, in which the decision maker has some discretion to grant an extension of time, the Federal Public Sector Labour Relations and Employment Board ("the Board"), which was the Public Service Labour Relations Board (PSLRB) at that time, has no discretion to extend the 90-day time limit imposed by s. 133(2) of the *CLC*. I invited submissions from the parties.

II. Summary of the arguments

A. The employer's submissions

[8] On October 16, 2019, the employer submitted that the complainant was first notified on October 4, 2017, of the disciplinary action imposed for his failure to report to work on May 17 and 18, 2017. On October 13, 2017, it advised him that his time sheets would be amended to reflect his unauthorized absences on May 17 and 18. Therefore, submitted the employer, he knew of the action or circumstances giving rise to the complaint under s. 133 of the *CLC* on October 13, 2017, and had 90 days from then to make his complaint. His complaint was made only on May 31, 2018, some seven months after the October 13 notification about his unauthorized leave. The employer requested that the Board dismiss the complaint for lack of jurisdiction.

B. The complainant's reply

[9] On November 1, 2019, the complainant submitted that the Board enjoys the same power as the Canada Industrial Relations Board (CIRB) to extend time limits for

complaints made under s. 133 of the *CLC*. According to the complainant, the authority to extend time limits is found in the *CLC* as well as in the *FPSLRA*.

[10] Further, any real or perceived delay was mainly due to compelling and cogent reasons. The complainant added that he has always maintained his interest in challenging the five-day suspension. He promptly filed and argued a disciplinary grievance. When his grievance was denied on May 9, 2018, he promptly filed his complaint under s. 133 of the *CLC* on May 31, 2018.

[11] The complainant did not believe that there has been a prejudice to the employer because of the alleged violations of the time limit. The injustice to the complainant should his complaint not be heard is significant: the requested corrective actions include a reversal of the 5-day suspension, which is financially essential to the complainant, whereas the prejudice to the employer should any extension be granted is relatively minor. The employer knew since November 2017 that there was a legal dispute arising out of the decision to discipline the complainant and was aware that the complainant was claiming that the matter constituted a reprisal or was otherwise connected to his exercise of the work refusal.

[12] The complainant pointed out that he was unrepresented until October of 2019 and that he tried to do his best to follow the differing sets of rules pertaining to complaints and grievances. Although he did not file a specific complaint under s. 133 of the *CLC* on October 27, 2017, he filed a grievance on that date that expressly referred to s. 147 of the *CLC*. This, according to the complainant, clearly indicates his intent to complain of a reprisal, and it was well within the 90-day limit.

[13] Thus, argued the complainant, the Board has jurisdiction to hear the matter.

C. The employer's reply submissions

[14] On November 7, 2019, the employer submitted that the complainant correctly cited s. 156 of the *CLC* as giving the CIRB the power to extend the time limits under the *CLC*, but the employer also pointed out that the complainant relied on the *FPSLRA* as it is in force today in making its arguments. This statutory framework is different from the one in force before July 29, 2019 amendments.

[15] Before July 29, 2019, s. 240(b) the *FPSLRA* expressly stated that "… section 156 of [the *CLC*] does not apply in respect of the Federal Public Sector Labour Relations

and Employment Board …". The employer argued there is a presumption at law that statutes do not have retroactive application. Parliament did not provide for retroactive application of the new changes to the *FPSLRA*. The Board is bound by the legislation in force prior to July 29, 2019.

[16] The employer maintained that the Board should decide its jurisdiction based on the legislation that was in force at the time. The employer pointed out that the complainant relied solely on CIRB jurisprudence to argue that the Board has jurisdiction to extend the time limit in s. 133(2) of the *CLC*. The Board (and its predecessors) has consistently held that it does not have jurisdiction to extend the time limits set out in s. 133(2) of the *CLC*. The employer referred to *Sainte-Marie* , *Babb v. Canada Revenue Agency*, 2012 PSLRB 47 at para. 9; *Baun v. Statistics Survey Operations*, 2018 FPSLREB 54 at para. 24; and *Lariviere v. Treasury Board (Department of Employment and Social Development)*, 2019 FPSLREB 73 at paras. 70 and 71.

[17] The employer also referred to *Chamberlain v. Treasury Board (Department of Human Resources and Skills Development)*, 2010 PSLRB 130 at para. 114, in which the PSLRB found that it had jurisdiction to consider only any alleged acts of reprisal that occurred in the 90 days before the complaint was filed. The Federal Court of Appeal upheld the PSLRB's decision (2012 FCA 44 at paras. 10 and 17), despite the complainant having been "confused and frustrated" by the jurisdictional objection.

[18] The employer maintained that this very issue was the subject of *Larocque v. Treasury Board (Department of Health)*, 2010 PSLRB 94. Relying on s. 240(b) of the *PSLRA*, the PSLRB concluded Parliament expressly denied the Board the authority to extend the time limits set out in Part II of the *CLC* and that it did not have the authority to extend the time limit for filing a complaint under s. 133(2) of the *CLC*.

[19] The employer argued that the following factors are irrelevant to the extension of the time limit: the complainant's personal circumstances, his attempt at navigating complex legislative rules, and that the employer always knew that he considered the suspension to be a reprisal. Subsection 133(2) of the *CLC* requires that a complaint be made, not that it was intended to be made. The question then becomes which is the act giving rise to the complaint, i.e. the discipline imposed for the complainant's unauthorized absence. The issue is whether the Board has jurisdiction to exercise its discretion to extend the time limit in this case.

[20] Thus, argued the employer, the Board does not have the jurisdiction to extend the 90-day time limit and receive the complaint.

D. The complainant's rebuttal submissions

[21] On November 22, 2019, the complainant acknowledged the amendments dated July 29, 2019, removing references to s. 156 of the *CLC*. It noted that s. 156 no longer concerns extending time limits. That power is contained in a new provision, s. 16(m.1) of the *CLC*.

[22] The complainant submitted that the new s. 240 of the *FPSLRA*, which no longer restricts the Board from extending time limits, is a procedural amendment, and is thus retrospective. A procedural provision is an exception to the presumption against retrospectivity.

[23] Procedural legislation, argued the complainant, is presumed to have immediate application. It cited a case dating to 1860, *Wright v. Hale* [1860] 6 H & N 227.

[24] The complainant also referred to Ruth Sullivan, in *Statutory Interpretation*, (Irwin Law, 2016) at page 361, for her definition of procedural law.

[25] The complainant referred to the Supreme Court of Canada's judgements on the retrospectivity of procedural provisions in *Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42, and *R. v. Dineley*, 2012 SCC 58. He also referred to the applicability of recent changes to the *Trade Union Act* (Chapter T-17 of *The Revised Statutes of Saskatchewan, 1978*) in *Saskatchewan Government and General Employees' Union v. Saskatchewan (Government)*, 2009 CanLII 30466 at para. 21 (SK LRB). The Saskatchewan Labour Relations Board elected to use its discretion to extend the time limits to the union in that case.

[26] The complainant argued that the Board's powers to extend time limits are procedural in nature because they have no bearing on the vested or substantive rights of individuals to make complaints or on respondents and the available defences. The change to s. 240 of the *FPSLRA*, which had long restricted the Board from extending time limits in complaints made under s. 133 of the *CLC*, was procedural. Therefore, it was retrospective in nature, and it permits the Board to exercise its powers under s. 12 of the *FPSLRA* to extend time limits for s. 133 complaints.

[27] The objectives of the *FPSLRA*, argued the complainant, include ensuring harmonious labour relations, protection of the public interest, and respect for collective agreements. This includes hearing cases involving protection from reprisal for exercising one's rights under the health and safety regime. The Board has applied s. 12 in a case concerning essential services, *PSAC v. Treasury Board*, 2010 PSLRB 88.

[28] Thus, the Board should exercise its discretion and extend the timeline so as to permit the complainant's case to be heard.

E. The employer's surrebuttal

[29] Since the complainant raised a new issue of retrospectivity, I permitted the employer a rebuttal. On December 3, 2019, it argued that changes to a statutory body's jurisdiction are not procedural in nature; they are substantive. Even if they were procedural, they are neither retroactive nor retrospective.

[30] Procedural laws, argued the employer, apply prospectively, not retroactively or retrospectively. The new amendments would have to go back in time to change the law at the time the complaint was filed.

[31] The employer argued that procedural laws apply immediately to pending cases. On May 31, 2018, the law did not allow making a complaint about any events that occurred more than 90 days before the filing date. The complainant's case is not pending because he did not file his complaint in time.

[32] Finally, the employer submitted that the argument with respect to section 12 of the *FPSLRA* has no merit. The Board's jurisdiction is not incidental to the attainment of the object of the legislation.

III. Analysis and reasons

[33] The complaint was filed on May 31, 2018, under s. 133 of the *CLC* alleging a violation of s. 147 by the respondent. Section 133 is under Part II of the *CLC* which applies to and in respect of the public service and persons employed in it by virtue of s. 240 of the *FPSLRA*. Part II includes sections 122 to 160 of the *CLC*.

[34] There is no debate on the complaint being filed at least seven months after the complainant received notification of disciplinary action for his unauthorized leave. The issue is whether the Board has jurisdiction to exercise discretion to extend the time

limit for filing the complaint. For the following reasons, I have determined that I do not have this discretion and therefore I am without jurisdiction to hear this complaint.

A. Retroactivity or retrospectivity of July 29, 2019 amendments

[35] At the time the complaint was filed, s. 156 of the *CLC* incorporated some of the CIRB'S powers under Part I of the Code into Part II:

> *156.(1) Despite subsection 14(1), the Chairperson or a Vice-Chairperson of the Board, or a member of the Board appointed under paragraph 9(2)(e), may dispose of any complaint made to the Board under this Part and, in relation to any complaint so made, that person*
>
> *a) has all the powers, rights and privileges that are conferred on the Board by this Act other than the power to make regulations under section 15; and*
>
> *b) is subject to all the obligations and limitations that are imposed on the Board by this Act.*
>
> *(2) The provisions of Part I respecting the orders and decisions of and proceedings before the Board under that Part apply in respect of all orders and decisions of and proceedings before the Board or any member thereof under this Part.*

[36] The complainant referred to the CIRB's jurisprudence and the state of the law regarding the powers of the CIB for extensions to the time limit prior to the July 29, 2019 amendments. While s. 133(2) under Part II of the *CLC* set a 90-day limit, the time limit could be extended under s. 16(m.1): The CIRB had, in relation to any proceeding before it, the power to extend the time limits set out in Part I for instituting a proceeding. By virtue of s. 156 of the *CLC*, this power also applied to Part II. The CIRB has applied s. 16(m.1) and s. 156 of the *CLC* to extend the 90-day time limit in s. 133 complaints on multiple occasions.

[37] However, the statutory powers of the Board were different at that time. Section 240(b) of the *FPSLRA* expressly stated that "… section 156 of [the CLC] does not apply in respect of the Federal Public Sector Labour Relations and Employment Board …". Parliament explicitly ousted the Board's jurisdiction to extend the time limit set out in s. 133(2) of the *CLC*. This was clearly affirmed in *Larocque v. Treasury Board (Department of Health)*, 2010 PSLRB 94. The Board has consistently held that it does not have jurisdiction to extend the time limit in s. 133(2) of the *CLC* and that this time limit is mandatory: *Sainte-Marie*; *Larocque*; *Babb v. Canada Revenue Agency,* 2012

PSLRB 47; *Larivière v. Treasury Board (Department of Employment and Social Development)*, 2019 FPSLREB 73.

[38] Following the coming into force of the July 29, 2019 amendments, the complainant submitted the Board now enjoys the same power as the CIRB to extend the time limit for complaints made under s. 133 of the *CLC*, given that S. 240(b) of the *FPSLRA* was repealed. The complainant affirmed s. 240 of the *FPSLRA* no longer fetters the powers of the Board with respect to the time limit given this new statutory framework. For the Board to accept this argument would mean that the July 29, 2019 amendments have either retroactive or retrospective application.

[39] In *Sullivan on the Construction of Statutes* (6th edition, 2014) at para. 25.76, Ruth Sullivan defines the terms retroactive statute and retrospective statute in the following manner:

> *A retroactive statute is one that changes the law as of a time prior to its enactment.*
>
> *A retrospective statute is one that attaches new consequences to an event that occurred prior to its enactment.*

[40] Courts have long recognized that the cases in which legislation has retroactive or retrospective effect must be exceptional. There is a presumption at law that statutes do not have retroactive or retrospective application.

[41] As noted in *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 43, the purpose of the presumption is to protect acquired rights and prevent a change in the law from looking to the past and attaching new prejudicial consequences to a completed transaction. The Court stated the presumption works such that statutes are not to be construed as having retrospective (or retroactive) operation unless such a construction is expressly or by necessary implication required by the language of the Act. The rule exists because of the need for certainty as to the legal consequences that attach to past facts and conduct.

[42] The presumption in favour of the retrospective (or retroactive) operation of a procedural enactment will yield to the contrary intent of Parliament: *R. v. Ali*, [1980] 1 S.C.R. 227, at p.235. Regardless of whether the July 29, 2019 amendments can be characterized as procedural in nature, I have reviewed whether Parliament has provided for transitional provisions concerning the time limit at s. 133 and related

provisions in the *Budget Implementation Act, 2017*, No. 1 (S.C. 2017, c. 20), the *FPSLRA* and the *CLC*, and find that the July 29, 2019, amendment concerning the time limit do not apply retroactively or retrospectively. Parliament did not provide for retrospective or retroactive application of the new changes to the *FPSLRA* following the July 29, 2019 amendments.

[43] Nevertheless, in the present case, the complainant submitted that the Board's powers to extend the time limit is purely procedural in nature because it has no bearing on the vested or substantive rights of individuals to make complaints or on respondents rights to raise available defences. The complainant referred to the new s. 240 of the *FPSLRA*, which no longer restricts the Board from extending the time limit, saying this is a procedural amendment, and is thus retrospective given that a procedural provision is an exception to the presumption against retrospectivity and is presumed to have immediate application. This would mean that the prior language which constrained the Board's ability to extend time limit, as set out in s. 240 of the *FPSLRA*, prior to July 26, 2019, is no longer of force and effect. The Board would no longer be restricted from extending the time limit in s. 133 complaints.

[44] Therefore, I must determine with the specific facts of this case whether the July 29, 2019 amendments removing the reference to s. 156 of the *CLC* in s. 240(b) of the *FPSLRA* is a purely procedural provision or a provision that affects substantive rights. As expressed at para. 25.113 in *Sullivan on the Construction of Statutes*, a provision may be procedural as applied to one set of facts but substantive as applied to another.

[45] The rule concerning a procedural amendment was formulated in *Wright v. Hale* [1860] 6 H & N 227 at 232:

> *Where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act.*

[46] The Supreme Court of Canada confirmed in *Angus v. Sun Alliance Insurance Co.*, [1988] 2 S.C.R. 256 that for a provision to be regarded as procedural, it must be exclusively so. Ruth Sullivan, in *Statutory Interpretation*, at p. 361, sets out the definition of procedural law as follows:

> *Procedural law is law that does not affect substantive rights in any way; it merely sets out modalities for the enforcement of existing*

> *rights, obligations, or prohibitions. It is well-established that new procedural legislation applies immediately to pending cases, that is, to cases that have not been definitively dealt with by the legal system. This includes not only cases at first instance but also cases on appeal.*

[47] The parties submitted relevant caselaw on the issue which guides the Board in the determination of whether the substantive rights of the parties are affected.

[48] The Supreme Court of Canada addressed the question of retrospectivity of procedural legislative changes in *Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42, where rules of evidence concerning a new fact-finding examination procedure applied immediately to pending actions upon coming into force. The Court found that, where a rule of evidence either created or impinged upon substantive or vested rights, its effects were not exclusively procedural and would not have immediate effect.

[49] The issue of retrospectivity was revisited in *R. v. Dineley*, 2012 SCC 58. The Court held that changes to the *Criminal Code* which eliminated access to a particular defence to charges of driving under the influence were not retrospective. The right of an accused to rely on a defence was a substantive right rather than a procedural right. New legislation had to be interpreted so as not to deprive the accused of a defence that would have been open to him or her at the time of the impugned act. The Court elaborated on the distinctions between substantive and procedural rights by stating that new procedural legislation designed to govern only the manner in which rights are asserted or enforced does not affect the substance of those rights. Normally, rules of procedure do not affect the content or existence of an action or defence (or right, obligation, or whatever else is the subject of the legislation), but only the manner of its enforcement or use.

[50] The Supreme Court of Canada found in *Angus*, at para. 20, the removal of a defence to actually be an extinguishment of a substantive right:

> *20. In the present case, it is difficult to see how procedure is being affected at all. The provision in question provides a complete defence to an action. Whatever may be the reasons for this, and whether one agrees or disagrees with them, the provision of a complete defence to an action, just as much as the creation of a cause of action itself, is a substantive matter.*

[51] Basically, by raising an objection on timeliness, the employer's asserted its right to a defence based on the lack of jurisdiction due to a temporal limitation. On jurisdiction, the employer relied on *Royal Bank of Canada v. Concrete Column Clamps (1961) Ltd.,* [1971] S.C.R. 1038, where the Supreme Court of Canada held that jurisdiction is not a procedural matter, and no reason was shown for holding that it becomes a procedural matter when a transfer of the Court's powers, rather than an increase or a decrease of its powers, is involved.

[52] The employer also relied on *Martin v. Perrie*, [1986] 1 S.C.R. 41. The right to bring an action in respect of medical services had become statute-barred long before the new legislation became effective. The Supreme Court of Canada held that the former limitation applied. The Court referred to a quote from the Privy Council at para. 25 that the Board finds relevant to the present case:

> *When a period of limitation has expired, a potential defendant should be able to assume that he is no longer at risk from a stale claim. He should be able to part with his papers if they exist and discard any proofs of witnesses which have been taken; discharge his solicitor if he has been retained; and order his affairs on the basis that his potential liability has gone. That is the whole purpose of the limitation defence.*

[53] I find this excerpt in *Sullivan on the Construction of Statutes*, at para. 25.117 relevant to the matter before me:

> *… To determine the temporal application of limitation of action provisions, courts appropriately rely on the basic principle that purely procedural provisions do not affect substantive rights. When a new limitation of action provision comes into force, it may extend or shorten the period within which an action must be commenced. If the provision comes into force before the period has lapsed, and if applying it would not have the effect of extinguishing the right of action, then its application to those facts is said to be purely procedural. In such a case, for both parties, the only thing that is lost or gained is time. However, when the effect of applying the new provision is either to extinguish an action that was still viable when the provision came into force, or to revive an action that was barred, more than time is at stake. In such a case, the provision affects the substantive rights of the parties and cannot be considered purely procedural.*

[54] I disagree with the complainant on the nature of the Board's power to extend the time limit. Since this power directly affects the substantive right of the employer to

raise a limitation defence, it is not purely procedural in nature in this case; it is substantive. In the absence of specific transitional provisions, I also rely on s. 43(c) of the *Interpretation Act,* R.S.C. 1985, c. I-21 to support my finding: Where an enactment is repealed in whole or in part, the repeal does not affect any right (such as the employer's defence) under the enactment so repealed. Otherwise, if I were to accept the complainant's interpretation of the July 29, 2019 amendments, the effect of applying new provisions and to consider s. 240(b) of the *FPSLRA* repealed would deprive the employer of a defence that was still viable in May 2018.

[55] This reasoning and the decisions raised by the parties are aligned with a previous decision by the Board in *Lamarche v. Marceau*, 2005 PSLRB 153, where the corollary of the limitation defence was at issue, i.e. the complainant's right to make an unfair labour practice complaint. This following excerpt confirms the principles on which the parties argued:

> *53 Thus, the principle of the non-retroactivity of statutes must be applied when the new period alters the vested rights of the parties to make a complaint at the time that the new Act came into force. In practice, the 90-day period could be considered purely procedural, and therefore, of immediate application, only if its effect were solely to extend or reduce the length of the period within which a complaint could be filed, without that right being removed or restored.*

[56] This analysis also applies to the right to raise a defence being removed or restored.

[57] The employer has also argued that procedural laws apply immediately to pending cases which allegedly is not the complainant's case. Given that I have determined that the nature of the Board's power to extend the time limit in this specific case is substantive, there is no need to make a finding on the immediate application of the July 29, 2019 amendments.

[58] I find my jurisdiction to be limited by s. 240(b) of the *FPSLRA* as it was in force prior to July 29, 2019. Parliament explicitly removed the Board's jurisdiction to extend time limits in matters involving s. 133 of the *CLC*. Consequently, the Board is bound by the legislation in force prior to July 29, 2019 in this specific case.

[59] The complainant referred to CIRB decisions to support that he has always maintained his interest in challenging his suspension by raising many reasons: prompt filing of his grievance and complaint, navigating complex legislative rules, no prejudice to the employer, alleged reprisal already known to the employer since November 2017, intent to complain of a reprisal. The employer raised that these factors are irrelevant.

[60] I find these factors are not within my jurisdiction. The Board's jurisdiction is derived from the *FPSLRA*. These factors are not enumerated in this statute, nor are they factors in the Board's case law.

B. Section 12 of the *FPSLRA*

[61] The complainant submitted that the Board may exercise its discretion to extend time limits for s. 133 complaints under s. 12 of the *FPSLRA*. Section 12 reads as follows:

> ***12*** *The Board administers this Act and it may exercise the powers and perform the duties and functions that are conferred or imposed on it by this Act, or as are incidental to the attainment of the objects of this Act, including the making of orders requiring compliance with this Act, with regulations made under it or with decisions made in respect of a matter coming before the Board.*

[62] The objectives of the *FPSLRA*, argued the complainant, include ensuring harmonious labour relations, protection of the public interest, and respect for collective agreements. This includes hearing cases involving protection from reprisal for exercising one's rights under the health and safety regime. The Board has applied s. 12 in a case concerning essential services, *PSAC v. Treasury Board*, 2010 PSLRB 88.

[63] The employer submitted that the argument with respect to section 12 of the *FPSLRA* has no merit. The Board's jurisdiction is not incidental to the attainment of the object of the legislation.

[64] I disagree with the complainant on the application of s. 12 of the *FPSLRA*. Section 12 of the *FPSLRA* does not apply to the present situation and cannot be invoked to extend the time limit so as to permit the complainant's matter to be heard. Given my finding that s. 240(b) of the *FPSLRA* applied at the time the complaint was filed, s. 12 of the *FPSLRA* cannot be interpreted in manner that would neutralize the effect to be given to s. 240(b).

IV. Conclusion

[65] Therefore, I find that I am without jurisdiction to hear the complaint. The complaint is dismissed.

[66] I wish to commend both counsel for their articulate and relevant submissions on this matter.

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

(The Order appears on the next page)

V. Order

[68] The complaint is dismissed.

[69] I order the file closed.

May 26, 2020.

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