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



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

BETWEEN

CHRISTOPHER HEATON LEACH

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Leach v. Public Service Alliance of Canada

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Aaron Lemkow, Public Service Alliance of Canada

Decided on the basis of written submissions
filed June 26, July 13, August 26, and September 18 and 21, 2020.
(FPSLREB Translation)

REASONS FOR DECISIONS**FPSLREB TRANSLATION**

I. Complaint before the Board

[1] On April 28, 2020, the complainant, Christopher Heaton Leach, made a complaint with the Federal Public Sector Labour Relations and Employment Board (“the Board”) against his bargaining agent, the Public Service Alliance of Canada (“the Alliance” or “the respondent”). He alleged in his complaint that the Alliance or its representatives committed an unfair labour practice within the meaning of s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), which prohibits an employee organization that is the bargaining agent for a bargaining unit from acting in a manner that is arbitrary or discriminatory or in bad faith in the representation of any employee in the bargaining unit.

II. The complainant’s submissions

[2] On the complaint form, the complainant stated that his union, the Alliance, did not defend him and that he was subjected to defamation and even violence by other members of the union. He claimed that he was paying the highest union dues while receiving the least service.

[3] On July 13, 2020, the complainant submitted details about the allegations in his complaint.

[4] The complainant claimed that he was a victim of harassment, defamation, and intimidation and that he received no support from his union representatives. He specifically alleged that Johanne Roberge, the president of the Alliance local that he belonged to, had refused to represent him in any matter. Furthermore, she allegedly never referred him to another union representative who could. He reportedly also approached other representatives, at a higher level in the union structure, who allegedly also refused to represent him.

[5] The complainant claimed that Ms. Roberge allegedly, and I quote, “[translation] ... admitted to wanting to incite employees to file more and more grievances ... In my opinion, it was intended to undermine my credibility as a manager ... and to cause me to lose my job as Fire Chief”. He stated that she excluded him from the grievances that concerned his employees. He claimed that the majority of the grievances were not brought to his attention before being forwarded to the military chain of command.

However, they should have been, because he was the manager involved. According to him, it made him look like a poor manager to his superiors.

[6] The complainant also claimed that some employees at the firehouse behaved harmfully, which was why he stated that he needed representation. Here is my summary of the complainant's submissions in support of his allegations:

[Translation]

- In the fall of 2019, several employees signed a letter addressed to the brigadier-general depicting the poor work environment at the firehouse. According to the complainant, the letter was full of lies and falsely referred to his incompetence. It was an attempt to tarnish his reputation.
- Several employees refused to carry out the tasks that the complainant had assigned to them, and for him, it became "[translation] harder and harder to enforce discipline". He argued that he was no longer able to perform his fire chief job without fearing retaliation from his employees, who might attack him physically.
- In September 2019, the employees refused to use a "[translation] discharge door", which the complainant had worked very hard to obtain. Instead, they moved it to his parking spot, sending him the clear message to "[translation] take the door". Shortly after that, two tires on his personal vehicle were deflated. Then, a rope was placed on his office door, suggesting that he should commit suicide.
- In June 2019, some employees allegedly added the word "temporary" to his door sign, parking spot, and locker, to let him know that he was not welcome at the firehouse. They supposedly also left McDonald's hiring pamphlets and leadership training brochures in his mail slot or under his office door many times.
- During a meeting on September 5, 2019, some employees apparently claimed that he was the enemy. They allegedly also said that he was carrying on an incestuous relationship with an employee at that time.
- In July 2019, an employee reportedly made a sexual harassment complaint against him. The complainant claimed to have spoken to her only once, in 2018. The complaint was dismissed. According to the complainant, the employee told the other employees that she had made the complaint, which effectively tarnished his reputation.
- During training sessions in 2019, some employees supposedly asked the trainer whether it was possible to extend the complainant's probation period so that he could be dismissed.
- The complainant claimed that when the firefighters were unsuccessful with their complaints, they approached other government entities with the goal of attacking his reputation, making him sick, or even making him lose his job.

[7] At my request, following the receipt of the complainant's submissions and the respondent's reply, which I will return to, the Board's Registry wrote to him and asked him to provide specific examples in which he reportedly asked for representation but was denied it. The Registry also asked the complainant to specify whether they were possible collective agreement breaches or disciplinary measures.

[8] On September 18, 2020, the complainant replied that they were not collective agreement breaches by his employer or disciplinary measures but that the problem was his union. He added that "[translation] ... a huge issue [of] harassment, workplace violence, and power struggles is taking place at my firehouse". According to him, the firefighters and the officers were harassing him to force him to quit or to give in to their demands. He claimed that the union was not helping him and that it was even encouraging its members to continue their attacks on him.

[9] In addition, according to the complainant, Ms. Roberge's harmful behaviour continued. According to him, she went to the Shannon city council to talk about him and about the city's fire chief, who were not respecting the mutual assistance agreement signed in May 2019. The complainant suggested that the Board contact his chain of command to obtain more examples of her behaviour.

III. The respondent's submissions

[10] The respondent claimed that the complainant was the subject of a number of grievances or complaints by employees who reported to him in the context of their work. Be that as it may, the respondent supposedly offered him representation services. It appointed Jimmy Tremblay, who tried to contact the complainant, but apparently, he never replied to Mr. Tremblay. The respondent also informed the complainant that four other national defence union locals were in the area where he worked. According to the respondent, he never contacted them.

[11] According to the respondent, Ms. Roberge defended the rights of her bargaining unit members. In that role, she encouraged them to file grievances if she believed that the employer had infringed on their rights. She never encouraged them to file grievances in an attempt to undermine the complainant's credibility. In addition, the grievances in question were not submitted to him because he was not a management representative in the grievance process.

[12] The complainant claimed that he was a victim of deplorable behaviour or actions by employees of the firehouse where he worked. But he in no way suggested that the respondent was behind any of those incidents or even that it was aware of them. Consequently, even assuming but not acknowledging that the incidents were true, they could not give rise to an unfair-labour-practice complaint.

[13] In any case, the respondent confirmed that some employees told the employer that the work environment had become toxic because of the complainant. It also confirmed that the sexual harassment complaint made against him was determined unfounded. Nevertheless, it does not constitute grounds for an unfair-labour-practice complaint.

[14] If proved, several of the complainant's allegations could turn out to be workplace violence. Even though the respondent stated that it strongly condemns workplace violence, its view is that ultimately, it is up to the employer to ensure a violence-free work environment. It suggested that the complainant approach the employer for redress, if he is looking for it.

[15] The respondent alleged that the complaint was made outside the 90-day time limit set out in s. 190(2) of the *Act*. The complainant made his complaint on April 20, 2020. He did not mention a date for several of the incidents. The dated incidents go back no further than September 24, 2019.

[16] The respondent also alleged that the Board has jurisdiction to hear complaints that relate only to the bargaining agent's duty to represent a member during a dispute with his or her employer. In this case, the complainant made no mention of a dispute with his employer. On that point, the respondent referred me to *Kraniauskas v. Public Service Alliance of Canada*, 2008 PSLRB 27. Furthermore, the complainant made no allegations that if true, would give rise to the application of ss. 186, 188, or 189 of the *Act*. On that basis, the complaint should be dismissed.

IV. The complainant's reply

[17] On September 18, 2020, at my request, the Registry wrote to the complainant, asking him to reply to the respondent's submissions, which so far he had not done in his previous submissions. In particular, he was invited to provide more specific

examples in which he would have asked for representation and the union allegedly refused to represent him.

[18] The complainant repeated some of his previous allegations, stating that the union did not help him and that it refused to represent him. Contrary to the respondent's argument, he claimed that he was never offered representation services. He wondered why Ms. Roberge did not represent him, as she had done for other employees at the firehouse. He also wondered why she "[translation] did not come to him with problems at the firehouse, to resolve them at the lowest level". He reiterated that she continually encouraged the employees to file grievances against him to undermine his credibility. He also invited the Board to contact his employer's management, which, according to him, could confirm several of his statements.

[19] According to the complainant, firehouse employees' grievances should be submitted to the fire chief, because that person is directly linked with the hierarchy level at which grievances are discussed.

[20] The complainant rejected the respondent's objection with respect to the time limit. According to him, if the Board does not have jurisdiction to hear his complaint, he wondered what would. He added that the union, not the employer, violated his rights.

[21] On November 6, 2020, at my request, the Registry again emailed the complainant, informing him that the Board had reviewed his complaint and the submissions it received and that it was ready to make a decision on it. The Registry informed him that if he believed that other information should be added to the file, he had to let it know no later than November 13 at 4:00 p.m. The complainant did not provide any such information to add to the file.

V. Analysis and reasons

[22] The complaint cited s. 190(1)(g) of the *Act*, which refers to s. 185. Among the unfair labour practices mentioned in that section, s. 187 is of interest in this complaint. These provisions read as follows:

190 (1) The Board must examine and inquire into any complaint made to it that

...

(g) the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.

...

185 *In this Division, **unfair labour practice** means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*

...

187 *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*

[Emphasis in the original]

[23] The respondent alleged that the complaint was made outside the time limit set out in s. 190(2) of the *Act*, which reads as follows:

Time for making complaint

(2) *Subject to subsections (3) and (4), a complaint under subsection (1) must be made to the Board not later than 90 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.*

[24] I carefully reviewed all the complainant's submissions. His complaint and his submissions to the Board dated July 13 and September 18 and 21, 2020, outlined incidents or facts that allegedly occurred on September 23, 2019, or before that date. He also mentioned a fall 2019 letter signed by several employees and addressed to the brigadier-general. The complaint was made on April 28, 2020. Clearly, the dates he specified predate the 90-day time limit, except for the letter to the brigadier-general, for which no specific date was provided. I would add that in his September 18, 2020, submissions, the complainant claimed that Ms. Roberge had allegedly spoken about him "[translation] recently" to the Shannon city council. I cannot consider this alleged incident, which supposedly occurred almost five months after the complaint was made.

[25] Therefore, I must dismiss the complaint on the grounds that it was made outside the time limit prescribed by the *Act*.

[26] Even if I accepted that the complaint was made within the time limit, I would still dismiss it on the grounds that the complainant did not demonstrate that the respondent failed its duty of representation. Based on what was submitted to me, I would not find that the respondent or its representatives acted in an arbitrary or discriminatory manner or in bad faith in the representation of the complainant.

[27] The complainant seems to be experiencing serious difficulties at work. If his arguments are true, I believe that he is under significant pressure, perhaps even experiencing intimidation or harassment from employees who report to him. If so, he must make a complaint not to the Board but to his employer, which has the legal obligation that has been recognized countless times by the courts since *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, to provide him with a work environment that is free of harassment or intimidation. Moreover, this Supreme Court decision involved the department that he works for.

[28] Although they are extremely serious, first and foremost, the problems that the complainant raised involve the relationship between members of the same union, not that between an employee and the employee's union. He is a unionized supervisor who must supervise the work of other unionized employees every day. He also describes himself as a manager. Such a partly ambiguous hierarchy situation can sometimes create discomfort, even tension. He is a fire chief and a manager; in addition, he is a union member who carries out some management functions with employees who are members of the same bargaining unit as he is. The Board's role is not to interfere, directly or indirectly, through a complaint against the union under s. 190 of the *Act*, in relationship issues between a supervisor and his or her employees.

[29] The Board asked the complainant to provide specific examples of situations in which he would have asked for representation and in which it was allegedly denied him. It also asked him to specify whether they were possible collective agreement breaches or disciplinary measures. He replied that they were not collective agreement breaches by his employer or disciplinary measures. He added that it consisted of harassment, workplace violence, and a power struggle. According to him, the employees were attacking him. He must knock at the correct door, which is not that of the Board, to solve his problems. If he feels harassed, he can make a harassment complaint with his employer.

[30] Repeatedly in its decisions (see, for example, *Kraniauskas*), the Board has determined that it has no jurisdiction to intervene in such situations. Instead, its role is to determine whether the bargaining agent failed its duty of representation for an employee in the employee's relationship with the employer. Yet, despite repeated requests, the complainant provided no examples of situations in which he would have asked to be represented and was allegedly denied it.

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

(The Order appears on the next page)

VI. Order

[32] The complaint is dismissed.

November 19, 2020.

FPSLREB Translation

**Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board**