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



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

BETWEEN

ANGELA JOSHI

Complainant

and

TREASURY BOARD

(Department of Employment and Social Development)

Respondent

Indexed as

Joshi v. Treasury Board (Department of Employment and Social Development)

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

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Valerie Taitt, analyst

Decided on the basis of written submissions,
filed June 21 and November 28, 2019.

REASONS FOR DECISION

I. Complaint before the Board

[1] Angela Joshi (“the complainant”) made a complaint against her employer, Employment and Social Development Canada (“ESDC” or “the respondent”), pursuant to s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; “the *Code*”).

[2] Section 133 of the *Code* provides that employees may make complaints to the Federal Public Sector Labour Relations and Employment Board (“the Board”) that they experienced reprisals from their employers because they exercised their rights under Part II of the *Code*, which entitles them to a safe and healthy workplace. Such conduct would be a contravention of s. 147 of the *Code*.

[3] The respondent denies that it contravened s. 147 of the *Code*. It filed a preliminary motion to dismiss the complaint without a hearing because 1) it is untimely, and 2) the complainant failed to make out a *prima facie* case.

[4] The complainant did not initially respond to the Board’s request that she file her response to the motion. As she is self-represented, the Board allowed her a second opportunity to respond, and she did.

[5] I find that the complaint should be dismissed as it was made well out of time.

II. Timeliness**A. The respondent’s submissions**

[6] The respondent submits that the complaint should be dismissed as it was made outside the 90 days prescribed by s. 133(2) of the *Code*. It notes that s. 133(2) states that a complaint made under this section “... 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] The Board received the complaint on April 24, 2019; therefore, the 90-day period would have begun as of January 24, 2019. On April 3, 2018, the complainant left the workplace on sick leave without pay for an indeterminate period and has been away from the workplace since then. However, although she was not physically at work she remained actively involved in discussions with the respondent about several

ongoing processes, including her grievance, a harassment complaint, and discussions related to her absence on sick leave.

[8] The respondent submits that the limited information in the complainant's written allegations makes it difficult to identify its alleged reprisals or actions. Although she submitted appendices to her complaint form, the respondent was left guessing how the circumstances described constitute actions of reprisal on its part that gave rise to the complaint.

[9] The respondent notes that only two of the documents appended to the complaint refer to events within the 90-day time frame — the March 1, 2019, third-level grievance response, and the March 25, 2019, "Bi-weekly discussions" email from the Quebec Regional Director, ESDC. The respondent's position is that neither document reflects any actions against the complainant that would be linked to her exercising her rights under Part II of the *Code*.

[10] The complainant refers to "unfolding events of the last 18 months". The grievance form submitted as an appendix to the complaint lists allegations. However, it is dated May 8, 2018. Therefore, if this complaint is based on any of those allegations, the complainant knew, or ought to have known, of the action or circumstances giving rise to the complaint at that time.

[11] The respondent submits that in the absence of any clear allegations referring to actions or circumstances that might have occurred between January 24, 2019, and April 24, 2019, the complaint is untimely.

B. The complainant's submissions

[12] The complainant submits that she did not receive the respondent's final-level grievance response until the first week of March 2019. She first tried to address the matters complained of in this complaint by way of a detailed grievance setting out more than 30 allegations. Accordingly, in her view, the date on which the clock began to run for making this complaint was when the respondent issued a "... final categorical refusal" to deal with any of her complaints via the grievance process.

[13] She states that before February 16, 2018, the respondent imposed administrative measures on her and threatened disciplinary action against her, with no reason or justification, and in response to her explicit attempts to protect her health

and safety in the workplace as well as that of her family members, both inside and outside the workplace.

[14] She further submits that after she made her Part II complaint on February 16, 2018, the respondent further punished her in April 2018 by adding even more alleged infractions supporting the threatened disciplinary actions. Despite her pending unresolved complaint and the absence of any formal complaints against her, the respondent enforced and promoted an ongoing climate of silence, oppression, and psychological harassment, while having direct and indirect knowledge that its actions were resulting in the complainant's ongoing victimization in the workplace. In June 2018 she received a second letter of expectations.

[15] The complainant submits that the respondent failed to protect her and that it continued to collude with coworkers and its Human Resources branch, specifically preventing her from taking reasonable action to protect her physical and psychological health and safety in the workplace. She further submits that these actions contributed directly to the fabrication of evidence in support of false criminal accusations and to other prejudice that followed as a result.

C. Analysis

[16] As stated in *Babb v. Canada Revenue Agency*, 2012 PSLRB 47, my jurisdiction to hear this complaint is limited to examining circumstances or actions of the respondent that allegedly contravened s. 147 of the *Code* and that took place within 90 days prior to her complaint being made on April 24, 2019, or of which the complainant knew or ought to have known within the 90 days prior to April 24, 2019.

[17] Section 133 of the *Code* sets out the following:

133 (1) An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention.

Time for making complaint

(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.

[Emphasis added]

[18] It is clear from the complainant's submission that she knew "... of the action or circumstances giving rise to the complaint" long before April 24, 2019.

[19] She alleges that even before she made her health-and-safety complaint on February 16, 2018, the respondent had already imposed administrative measures and threatened disciplinary action against her with no reason or justification and in response to her explicit attempts to protect her health and safety in the workplace, as well as that of her family members, both inside and outside the workplace.

[20] She further noted that in April 2018, after she had made her Part II complaint on February 16, 2018, the respondent further punished her by adding even more alleged infractions supporting the threatened disciplinary actions.

[21] Furthermore, the complainant filed her grievance on May 8, 2018. It is attached as one of the appendices to her complaint. It appears that this complaint is based on the same circumstances outlined in her grievance.

[22] None of this is alleged to have taken place within 90 days before her complaint was made on April 24, 2019.

[23] I agree with the respondent that neither document appended to the complaint that refers to events within the 90-day time frame (the March 1, 2019, third-level grievance response, and the March 25, 2019, "Bi-weekly discussions" email from the Quebec Regional Director) indicates any action against the complainant that links to the exercise of her rights under Part II of the *Code*.

[24] The complainant also submitted that she first tried to deal with these issues through the grievance procedure and that therefore, the clock for making this complaint began to run only when the respondent issued its third-level grievance reply in March 2019. This submission is without merit. Section 133(2) is clear. A complaint shall be made not later than 90 days after the date on which the complainant knew, or ought to have known, of the action or circumstances giving rise to the complaint. It does not say that a complaint may be made once an attempt to grieve the same action or circumstances has been unsuccessfully completed.

[25] Consequently, the action or circumstances referred to by the complainant fall well outside the 90-day time limit. I find that the complaint is untimely and that it

should be dismissed on that basis. Given that I have dismissed the complaint based on timeliness, it is not necessary to address the respondent's second objection with respect to the establishment of an arguable case.

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

III. Order

[27] The respondent's motion is granted and the complaint is dismissed.

May 21, 2021.

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**