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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

VALERIE ANDRUSZKIEWICZ

Complainant

and

CANADA BORDER SERVICES AGENCY

Respondent

Indexed as

Andruszkiewicz v. Canada Border Services Agency

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

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Valerie Taitt, Treasury Board Secretariat

Decided on the basis of written submissions,
filed December 22, 2020, January 22, 2021 and June 17, 2021.

REASONS FOR DECISION

I. Complaint before the Board

[1] On November 23, 2020, Valerie Andruszkiewicz (“the complainant”) made a complaint under s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) alleging that the respondent, the Canada Border Services Agency (“the Agency”), committed an unfair labour practice within the meaning of s. 185 of the Act and, in particular, s. 186(2).

[2] Section 186(2) of the Act states this:

***186 (2)** No employer, no person acting on the employer’s behalf, and, whether or not they are acting on the employer’s behalf, no person who occupies a managerial or confidential position and no person who is an officer as defined in subsection 2(1) of the Royal Canadian Mounted Police Act or who occupies a position held by such an officer, shall*

(a) refuse to employ or to continue to employ, or suspend, lay off, discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,

(ii) has testified or otherwise participated, or may testify or otherwise participate, in a proceeding under this Part or Part 2 or 2.1

(iii) has made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or

(iv) has exercised any right under this Part or Part 2 or 2.1.

(b) impose, or propose the imposition of, any condition on an appointment, or in an employee’s terms and conditions of employment, that seeks to restrain an employee or a person seeking employment from becoming a member of an employee organization or exercising any right under this Part or Part 2 or 2.1; or

(c) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a financial or other penalty or by any other means, to compel a person to refrain

from becoming or to cease to be a member, officer or representative of an employee organization or to refrain from

(i) testifying or otherwise participating in a proceeding under this Part or Part 2 or 2.1,

(ii) making a disclosure that the person may be required to make in a proceeding under this Part or Part 2 or 2.1, or

(iii) making an application or filing a complaint under this Part or Division 1 of Part 2.1 or presenting a grievance under Part 2 or Division 2 of Part 2.1.

[3] The complainant alleges that the Agency conducted an arbitrary, discriminatory, and bad-faith investigation into a harassment complaint she made against senior management. She alleges that in the course of its investigation, the Agency violated Treasury Board policies, including the investigation guide for the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. She alleges that it left out testimony and that it destroyed evidence.

[4] She states that she grieved the handling of the investigation to the final level of the grievance process. She also states that she was provided with a copy of the employer's final-level decision with respect to her grievance on August 27, 2020.

[5] By way of corrective action, she seeks an apology, salary lost (including holiday and overtime pay), and reimbursement for loss of leave, as well as a fair and transparent reinvestigation.

II. The Agency's position

[6] On December 22, 2020, the Agency replied to the complaint, objecting to its timeliness and requesting, in the alternative, that it be dismissed summarily because the complainant's allegations could not support a finding of violation of a prohibition contained in s. 186(2) of the *Act*.

III. Timeliness

[7] The complainant filed the complaint on November 23, 2020. She stated that she learned of the facts underlying the complaint 88 days earlier, when she received the final-level decision on her grievance on August 27, 2020.

[8] The employer denied the complainant's grievance because it considered that an external investigator handled her harassment complaint properly and that the Treasury Board Secretariat's policies were followed.

[9] The Agency submits that, contrary to the time limit set out in s. 190(2) of the *Act*, the complainant filed the complaint more than 90 days after she became aware of the facts at issue.

[10] The Agency argued that the final-level decision on the grievance did not provide the complainant with any new information that she did not already know and that she should have filed the complaint within 90 days of learning of the results of the investigation of her harassment complaint.

IV. Background

[11] The complainant is not represented by a bargaining agent.

[12] In June 2018, the complainant made a harassment complaint in which she alleged that her manager, her director, and her director general had discriminated against her since 2016. The Agency retained an external investigator to investigate some of the allegations raised in the harassment complaint.

[13] The investigation took place between December 2018 and May 2019, and during that time, two additional allegations were added to the investigator's mandate. In June 2019, the investigator reported that the allegations did not relate to harassment, as defined in the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*.

[14] The Agency informed the complainant and the alleged harassers of the investigator's findings in the summer of 2019.

[15] On October 7, 2019, the complainant grieved the handling of the harassment investigation.

[16] On August 17, 2020, the employer denied the grievance at the final level of the grievance process. The employer's decision concluded in part as follows:

...

The investigations, led by an impartial external investigator, both concluded that the allegations raised in your complaints did not meet the definition of harassment and thus, were unfounded. After a review of the entire process, I am confident that it was undertaken in accordance with the relevant Treasury Board Secretariat harassment directives and policies and see no reason to intervene.

...

V. Analysis

[17] The complainant alleges that the Agency conducted an arbitrary, discriminatory, and bad-faith investigation into a harassment complaint she made against senior management. She alleges that in the course of its investigation, the Agency violated Treasury Board policies, including the investigation guide for the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. She alleges that it left out testimony and that it destroyed evidence.

[18] On October 7, 2019, the complainant grieved the handling of the harassment investigation. The employer denied the grievance at the final level of the grievance process. The employer's decision notes this in part:

...

The following is in response to the above grievance in which you grieved that the harassment complaint process was mismanaged by the CBSA and the investigator.

As corrective action, you requested compensation for lost salary, including overtime and shift differential pay, a return of leave used since 2016, and for an independent, non-commissioned employee of the federal government to review the findings of the investigations.

...

[19] It is apparent that after exhausting the grievance process, the complainant raised before the Board what is in essence and substance the same issues as those in her grievance, alleging this time that the Agency engaged in an unfair labour practice when it handled her harassment complaint.

[20] The complainant in this case is not represented by a bargaining agent, and her terms and conditions of employment are not in a collective agreement. She does not have access to the adjudication process for her grievance that alleged that the Agency failed to follow Treasury Board policies with respect to harassment investigations. Any right that the complainant had with regards to the employer's decision that denied her

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grievance should have been pursued before the Federal Court by way of an application for judicial review of that decision: see ss. 18 and 18.1 of the *Federal Courts Act* (R.S.C”, 1985, c. F-7).

[21] This brings me to the objection of timeliness raised by the Agency. As mentioned previously, the complainant is raising now essentially the same issues as those in her grievance. She claims to have known or learned of the events giving rise to this complaint when she was provided, on August 27, 2020, with the employer’s decision denying her grievance. I note with interest that she did not respond to the Agency’s assertion that she did not learn from that decision anything new that she did not already know when the Agency provided her, in the summer of 2019, with the investigator’s findings on her harassment complaint.

[22] Although there is not yet before the Board any evidence adduced through a contradictory process with regards to the timeliness issue, I do believe that the complainant ought to have provided a response to the Agency’s objection. Further, based on the fact that the complainant offered no explanation in that regard, I think it more likely than not that she has no plausible explanation for filing her complaint more than 90 days after being informed of the outcome of her harassment complaint. It should be kept in mind that the complaint relates to the Agency’s handling of her harassment complaint and not to the handling of her grievance.

[23] Although my findings regarding the Agency’s objection to timeliness dispose of the complaint, for the sake of completeness, I will consider nevertheless whether the complainant’s allegations may constitute an unfair labour practice within the meaning of the *Act*. In other words, I will consider whether, taking the facts alleged by the complaint as true for the sole purpose of deciding on the Agency’s request for summary dismissal, there is an arguable case of a violation of a prohibition contained in s. 186(2) of the *Act*.

[24] In *Laplante v. Treasury Board (Department of Industry and the Communications Research Centre)*, 2007 PSLRB 95, Ms. Laplante made a complaint under s. 190 of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) alleging unfair labour practices by her employer as specified in ss. 186(1) and (2). She made a number of allegations, including that her employer had changed her working conditions based on

discrimination. Other employees had complained against Ms. Laplante, alleging harassment on her part.

[25] Ms. Laplante's employer changed her working conditions so that she would no longer work with the employees who had complained against her, in accordance with its harassment policy. After investigating, Ms. Laplante's employer determined that the other employees' harassment complaints were unfounded.

[26] Ms. Laplante's employer did not immediately reinstate her to her former functions. She also filed grievances based on the same facts as her complaint, and she made distinct harassment complaints. The Public Service Labour Relations Board found that Ms. Laplante's employer had not contravened ss. 186(1) or (2) of the *Public Service Labour Relations Act*. Furthermore, the Public Service Labour Relations Board found that Ms. Laplante's harassment allegations were not grounds for a complaint under s. 190, and it dismissed the complaint.

[27] The Public Service Labour Relations Board set out its reasons on Ms. Laplante's employer's objection to the complaint at paragraphs 68 through 83. I will recite those reasons in part, as follows:

[68] ... I agree with the employer's argument that an unfair labour practice complaint must be based on a breach of the prohibitions set out in the provisions of section 185.

[69] To decide the preliminary objection, I must determine whether the allegations of the complainant's complaint can be considered prohibitions under the new Act.

...

[28] The Public Service Labour Relations Board then examined Ms. Laplante's complaint in light of the specific provisions in ss. 186(2)(a) and (b) of the *Public Service Labour Relations Act*.

[29] At paragraph 80, the Public Service Labour Relations Board dealt with Ms. Laplante's harassment complaints, stating as follows:

[80] I come to the same conclusion with respect to both the harassment complaints and the grievances listed by Ms. Laplante in this complaint, which she filed against certain managers. The circumstances described in the complaint [sic] do not state why, among the reasons set out in subparagraphs 186(2)(a)(ii) to (iv) of the new Act, those managers allegedly failed to comply with the

prohibitions against unfair labour practices specified ... in those circumstances.

[30] In the result, the Public Service Labour Relations Board allowed Ms. Laplante's employer's objection that the complaint was not one that the Public Service Labour Relations Board could decide under s. 190 of the *Public Service Labour Relations Act*.

[31] The grounds set out in s. 186(2) of the *Act* prohibit discrimination by an employer based solely on the situations described in s. 186(2).

[32] Sections 186(2)(a)(i), (b), and (c) relate to a person's membership or participation in an employee organization.

[33] Sections 186(2)(a)(ii), and (c)(i) relate to a person's participation as a witness in a proceeding under Part 1, 2 or 2.1 of the *Act*.

[34] Sections 186(2)(a)(iii), and (c)(iii) relate to a person making an application or filing a complaint under Part 1 of the *Act* or a grievance under Part 2 or Division 2 of Part 2.1.

[35] Section 186(2)(iv) relates to a person exercising a right under Part 1, 2, or 2.1 of the *Act*.

[36] Section 186(2)(c)(ii) relates to a person making a disclosure with regards to a proceeding under Part 1, 2 or 2.1 of the *Act*.

[37] Even by taking all the facts alleged by the complaint as true for the sole purpose of deciding on the Agency's request for summary dismissal, I can see no arguable case of a violation of a prohibition contained in s. 186(2) of the *Act*.

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

(The Order appears on the next page)

VI. Order

[39] The complaint is dismissed.

June 21, 2021.

**David Olsen,
a panel of the Federal Public Sector
Labour Relations and Employment Board**