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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

LYNE BRASSARD

Complainant

and

**TREASURY BOARD
(Immigration, Refugees and Citizenship Canada)**

Respondent

Indexed as

Brassard v. Treasury Board (Immigration, Refugees and Citizenship Canada)

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

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Andr anne Laurin, counsel

Decided on the basis of written submissions,
filed September 8 and 29 and October 14, 2021.
(FPSLREB Translation)

I. Introduction

[1] Lyne Brassard (“the complainant”) made a complaint against her employer, Immigration, Refugees and Citizenship Canada (“the respondent”), pursuant to s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; “the *Code*”). She submits that she experienced harassment, bullying, and discrimination in the workplace while she was a casual employee of the respondent.

[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 contravene s. 147 of the *Code*.

[3] The respondent asked the Board to dismiss the complaint without a hearing, and it raised two preliminary objections. According to it, the complainant was not entitled to recourse through the complaint process provided at s. 133 of the *Code* because she was a casual employee. She was not an employee pursuant to s. 2(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*), in which the definition of “employee” excludes a person employed on a casual basis. Moreover, the respondent raised an objection about her failure to specify the nature of her allegations and the provision or provisions of s. 147 that she claimed were relevant to her complaint.

[4] In August 2021, the Board informed the parties that before proceeding to a hearing and that based on written submissions, it would determine whether the complainant showed that there is an arguable case that the respondent violated s. 147 of the *Code*. If the Board determined that the complaint was an arguable case, a hearing would be scheduled. If not, the complaint would be dismissed.

[5] The complainant was also informed that she had to present all the arguments and allegations that in her view, supported her claim that the respondent violated s. 147 of the *Code*. This was not the first time that the Board had informed her that she had to elaborate on the respondent’s actions that in her view, violated s. 147.

[6] This decision concerns only the second objection that the respondent raised. Its objection about the complainant's casual-employee status cannot be allowed. Although s. 2(1) provides a definition of "employee" that applies to the *FPSLRA* in its entirety and that excludes persons employed on a casual basis, s. 240(a)(iv) of the *FPSLRA* provides a definition of "employee" that is specific to matters pertaining to the application of Part II of the *Code*. That definition includes any person employed in the public service and prevails in matters of complaints made under s. 133 of the *Code*.

[7] The respondent's objection that the complainant failed to specify the nature of her allegations and the provisions of s. 147 that were relevant to her complaint is founded.

[8] The complainant did not show that there is an arguable case, despite several invitations to reinforce her case. The allegations raised are about incidents of harassment, bullying, and discrimination that occurred in the workplace in circumstances with no apparent link to the health and safety issues that led the complainant to exercise her rights under Part II of the *Code*. She also failed to present any facts or allegations that showed that she was subject to reprisals under s. 147 of the *Code*.

[9] Since my jurisdiction to hear complaints made under s. 133 of the *Code* is limited to reviewing the respondent's actions that allegedly contravened s. 147, and since the complainant did not show that there is an arguable case that such a contravention occurred, I must conclude that I do not have jurisdiction to consider this complaint.

II. Complaint before the Board

[10] The complainant was a casual employee at Immigration, Refugees and Citizenship Canada ("IRCC") in Mississauga, Ontario, from June 3, 2019, until she resigned on August 23, 2019.

[11] She held positions at the CR-03 and CR-04 group and levels. Initially, she was hired to work in a division that handles international requests and mail. In July 2019, she was transferred to a division that handles requests termed "[translation] internal".

[12] On September 19, 2019, the complainant made this complaint to the Board pursuant to s. 133 of the *Code* using Form 26. Under the heading, “Concise statement of each act, omission or other matter complained of, including dates and names of persons involved”, the complainant wrote, “[translation] The employer acted in contravention of s. 147 of the Canada Labour Code. The employer used intimidation and bullying against the complainant. That affected her mental health.”

[13] In its initial response to the complaint, the respondent raised two objections, including one about the complainant’s failure to specify the nature of her allegations and the provision or provisions of s. 147 of the *Code* that were relevant to her complaint. More than once in the correspondence on file, the respondent stated that it was difficult, if not impossible, for it to know the case to which it should respond.

[14] In December 2019, the complainant provided a document to the Board and the respondent in which she stated that she experienced bullying in the workplace “[translation] ... while carrying out her new duties processing international requests” and that she experienced discrimination, including an incident “[translation] ... that occurred in a building elevator ...” and that allegedly involved members of “[translation] senior management”. She added that she left her employment because she felt discriminated against, devalued, and lacking in resources to resolve the workplace bullying problem.

[15] On April 28, 2020, the Board contacted the parties and specified that the complainant had to explain the alleged disciplinary action to it, to apply ss. 133 and 147 of the *Code*. On May 4, 2020, the complainant submitted a two-page document in response to that request, which contains the definitions of “verbal reprimand” and “written reprimand” developed by the Treasury Board as well as the wording of s. 147. She put an excerpt of that legislative provision in bold, as follows:

147 No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee’s rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee

(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;

(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or

(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.

[Emphasis in the original]

[16] The only excerpt from that document that pertains directly to the complaint reads as follows:

[Translation]

...

In conclusion, the undersigned would like to mention that on several occasions, the employer used threats as disciplinary action. Furthermore, it was difficult for the undersigned to obtain the last two salary payments to which she was fully entitled. The undersigned had to make a complaint to the federal labour standards office

...

[17] On June 21, 2021, the Board again asked the complainant to specify the respondent's actions that in her view, contravened s. 147 of the *Code*. She was asked to provide the names of the people involved as well as their alleged actions.

[18] A few days later, the complainant requested a postponement of the hearing that was scheduled for mid-October 2021. The request was denied for lack of a valid reason.

[19] As it had not received the information requested in its June 21, 2021, communication, the Board contacted the parties again on July 23, 2021, to confirm the complainant's interest in pursuing the case. But it also included a reminder of the previous request to her to provide details about the respondent's alleged actions.

[20] That same day, the complainant requested that her file be placed in abeyance. A case management conference was held a few days later. The request was rejected.

[21] As previously stated, on August 11, 2021, the Board informed the parties that it would decide based on written submissions whether the complainant had shown that

there is an arguable case that the respondent contravened s. 147 of the *Code*. She was informed again that she had to submit all the arguments and allegations that in her view, supported her claim that the respondent violated s. 147. The communication included the wording from that section.

[22] The complainant filed written submissions as well as a reply to the respondent's response.

[23] In her written submissions filed on September 8, 2021, the complainant stated that the following question had to be asked: “[translation] Are bullying, harassment, and verbal abuse considered violations of section 147 of the *Canada Labour Code*?” She subsequently listed, in point form and very briefly, what she described as examples of bullying and harassment, as follows:

- abuse of authority by publicly ridiculing or reprimanding a subordinate;
- abuse of authority by interfering in a subordinate's performance or career by arbitrarily refusing requests for leave, training, or promotion;
- excluding or isolating a person, in particular by failing to take the necessary steps to obtain the complainant's signature on a document intended to finalize her termination of employment with the IRCC; and
- speaking in confidence about an employee in a public space.

[24] According to the complainant, some of the respondent's violations — namely, a lack of professionalism and integrity in managing her performance and attendance, a lack of communication, and a violation of the rules for managing sensitive personal information — constituted the bullying, violence, and harassment that became unbearable for her. She added that an attempt to discuss and address the situation was unsuccessful because the IRCC “[translation] ... had already initiated a ‘covert’ process ... to get rid of her or to have her leave her employment”. According to her, it was a violation of s. 147 of the *Code*.

[25] The reply that the complainant filed added to the bullying and harassment allegations as follows (in no particular order):

- The IRCC apparently subrogated her right to sign her resignation letter by claiming that she was not available to sign it. By acting that way, it allegedly lacked integrity and failed to respect the rules established by the Treasury Board.

- Reportedly, an IRCC employee harassed her and attempted to obtain personal information about her to confirm or refute allegations from other departments.
- She allegedly lost employment opportunities due to the lack of integrity of the IRCC and its managers.
- The IRCC apparently lacked judgment and transparency by denying any communication with her.
- The IRCC allegedly attempted to dismiss her before she decided to resign due to a situation that had become unbearable.
- In an elevator, she reportedly overheard two IRCC supervisors talking about a Francophone employee who had “serious” problems; however, they did not name the employee in question.
- Allegedly, in August 2019, her performance was suddenly changed from good to “[translation] poor” and even to “[translation] inappropriate behaviour”, with no justification or explanation. She was never informed of the actions that had been considered inappropriate.

[26] No other details (i.e., dates, descriptions, or the names of individuals involved) were provided for all these allegations.

[27] The complainant’s written submissions include many referrals to external sources (e.g., the *FPSLRA*, the *Financial Administration Act* (R.S.C., 1985, c. F-11), an information circular of the Canada Industrial Relations Board, excerpts of jurisprudence from the Board and from the Occupational Health and Safety Tribunal Canada), but she did not explain their relevance to her complaint.

[28] In response to these allegations, the respondent submitted that the complainant did not specify the events that led to her allegations and that she did not demonstrate that her complaint met the criteria established by the jurisprudence. Specifically, she did not mention any right that she allegedly exercised under Part II of the *Code* and did not identify any specific event during which she allegedly faced reprisals under s. 147. None of her allegations can be tied to the circumstances set out in ss. 147(a), (b), or (c).

III. Reasons

[29] As stated at paragraph 9 of *Babb v. Canada Revenue Agency*, 2012 PSLRB 47, the Board’s jurisdiction to hear a complaint made under s. 133 of the *Code* is limited to examining the respondent’s circumstances or actions that allegedly contravened s. 147.

[30] To consider this complaint, I will apply the “[translation] arguable case analysis”, which the Board often uses when faced with a preliminary objection like the

one that the respondent raised. By considering the alleged facts as true, I must decide whether the complainant showed that there is an arguable case that the respondent contravened s. 147 of the *Code*.

[31] Part II of the *Code* concerns occupational health and safety. Under s. 133, an employee may make a complaint to the Board on the grounds that the employer took reprisal action against the employee for exercising rights under Part II of the *Code*. Section 133(1) reads as follows:

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.*

[32] Section 147 of the *Code* prohibits an employer from taking reprisal action against an employee who exercises rights under Part II of the *Code* and reads as follows:

147 *No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee*

(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;

(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or

(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.

[33] In *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52 at para. 64, the Public Service Labour Relations Board (the Board's name then) established a four-part test to determine whether s. 147 of the *Code* was contravened. To conclude that an arguable case exists pursuant to that section, the complainant had to provide information and allegations to demonstrate the following:

- she exercised her rights under Part II of the *Code* (see ss. 147 (a), (b), and (c));
- she suffered reprisals (see s. 133 and the reprisals listed in s. 147);
- the reprisals were of a disciplinary nature, as defined in the *Code* (see s. 147); and
- there is a direct link between her exercising her rights and the reprisal actions taken against her.

[34] By considering the alleged facts as true, I must determine whether they can support an arguable case that the respondent contravened s. 147. The burden of proof is on the complainant, and it is up to her to present facts and allegations for each of the four parts.

[35] Complaints under s. 133 of the *Code* must clearly describe the respondent's actions and when they were taken. A self-represented party is not expected to frame the cause of his or her complaint in unequivocal and precise terms. On the other hand, the party does have a responsibility to make the basis of the complaint sufficiently clear to the Board so that it can understand the nature of the case and so that the respondent can know the allegations against which it must defend; see *Gaskin v. Canada Revenue Agency*, 2008 PSLRB 96 at para. 57.

[36] In her complaint, the complainant describes the alleged action or situation in general and imprecise terms. The complaint does not mention the date, the right that she allegedly exercised under Part II of the *Code*, or the description of the circumstances or the actions that the respondent allegedly took as reprisals against that right being exercised. She also did not identify the person or persons involved.

[37] The complaint made to the Board contains few details, but what about the documents and written submissions that the complainant filed?

[38] Although the Board asked the complainant to specify the respondent's actions that contravened s. 147 of the *Code*, to confirm the alleged disciplinary actions and to submit all the allegations and arguments that in her view, supported her claim that the respondent violated that section, in her written submissions, she mentioned only workplace bullying and harassment allegations in imprecise terms and without any apparent links to contraventions of the prohibitions in s. 147.

[39] To demonstrate that she has an arguable case, the complainant must first identify the right or rights that she exercised under Part II of the *Code*. That is the first part of the *Vallée* test.

[40] The complainant did not refer to any occupational health and safety issues that led her to exercise one of the rights provided in Part II of the *Code*. Those rights are listed in ss. 147(a) to (c). She did not specify the provision or provisions of s. 147 that are relevant to her allegations, despite being asked to provide that information.

[41] The failure to identify that a right under Part II of the *Code* was exercised is in itself fatal to the case. My analysis could end here. However, I would add that it is also possible for me to conclude that there is no arguable case because the complainant failed to submit information or allegations that could demonstrate that she suffered reprisals per s. 147.

[42] For the Board to conclude that there is an arguable case, the complainant must submit information demonstrating that one of the following actions was taken against her: a dismissal, a suspension, a layoff, a demotion, the imposition of a financial or other penalty, a refusal to pay remuneration to which she is entitled, or disciplinary action being taken or a threat being made to take it.

[43] The complainant refers to bullying that occurred “[translation] while carrying out her ... duties”, to “[translation] threats ... for disciplinary purposes”, and to different violations that are listed in paragraph 25 of this decision. Although she identifies several violations that she characterizes as bullying, violence, and harassment, they do not constitute reprisals under s. 147 of the *Code*. With no relevant explanation or written submission from her, I am unable to conclude that she discharged her burden of specifying the reprisal or reprisals that she suffered based solely on the facts that she referred to “[translation] threats ... for disciplinary purposes” and to a difficulty “[translation] obtaining the last two salary payments to which she was entitled” and that she put in bold certain excerpts from s. 147 (see paragraph 15 of this decision).

[44] No specific reprisal allegation was made. The complainant’s allegations are vague and contain very few details. They are decidedly insufficient for the Board to

understand the nature of her case and for the respondent to know the allegations against which it must defend; see *Gaskin*.

[45] The only allegation that may have any link to the reprisals set out in s. 147 is a brief statement about the “[translation] difficulty” obtaining two salary payments. Even if I assume without making a decision that the complainant’s difficulty amounts to a “[translation] refusal to pay remuneration”, with no identification of a right exercised under Part II of the *Code*, I cannot conclude that there is an arguable case of a direct link between a right under the *Code* being exercised and the reprisals suffered.

[46] On examining all the complainant’s written submissions and allegations in light of the *Vallée* criteria, I cannot conclude that there is an arguable case. It is clear that the first part, namely, a right under Part II of the *Code* being exercised, was not established. As soon as one of the parts is not established, it is not necessary for me to consider the other parts.

[47] Sections 133 and 147 of the *Code* offer protection from reprisals to employees who have exercised rights under Part II. It is not a regime that allows for complaints that have no linkage to the rights under Part II and the circumstances set out in s. 147. As the complainant does not indicate that she exercised a right under Part II, a complaint under s. 133 is not an appropriate mechanism for dealing with her workplace bullying and harassment allegations.

[48] The Board’s role in the complaint process under the *Code* is very limited. It does not have jurisdiction to decide the issues that the complainant raised. I allow the respondent’s objection. I dismiss the complaint on the basis that there is no arguable case demonstrating that the essential elements of a complaint made under s. 133 of the *Code* are present.

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

(The Order appears on the next page)

IV. Order

[50] The respondent's objection is allowed that the complainant failed to specify the nature of her allegations and the provision or provisions of s. 147 that she claimed were relevant to her complaint.

[51] The complaint is dismissed.

November 23, 2021.

FPSLREB Translation

**Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board**