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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

SAMUEL DELICE-CHARLEMAGNE

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Delice-Charlemagne 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: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Abudi Awaysheh, Public Service Alliance of Canada

Decided on the basis of written submissions,
filed January 19 and February 24, 2020,
and August 16 and 30 and September 20, 2021.

REASONS FOR DECISION

I. Summary

[1] In November 2019, Samuel Delice-Charlemagne ("the complainant") made a complaint to the Federal Public Sector Labour Relations and Employment Board ("the Board"), alleging that the Union of Taxation Employees ("UTE") committed an unfair labour practice. The UTE is a component of the Public Service Alliance of Canada ("the respondent").

[2] The complaint relates to events dating to 2016, 2017 and 2019.

[3] In November 2016, the complainant sent a grievance presentation form to a UTE representative. He sought to grieve the non-renewal of his term employment with the Canada Revenue Agency (CRA). His term had ended on September 30, 2016.

[4] According to the complainant, the UTE representative failed to present the grievance on his behalf and mistakenly or intentionally led him to believe that the impending closure of the office at which the complainant had worked prevented the representative from pursuing the grievance. After speaking to an acquaintance in early 2019 and learning that his former workplace had not closed, the complainant communicated with the UTE in an attempt to have it reopen his case. He was informed that he was well beyond the time limits for presenting a grievance challenging the non-renewal of his term employment. He then made an unfair-labour-practice complaint to the Board under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), alleging a breach of the respondent's duty of fair representation under s. 187.

[5] The respondent asked the Board to decide the complaint based on written submissions and to dismiss it without an oral hearing. It raised four grounds for dismissal. One of those grounds was the complaint's timeliness; notably, that it was made well beyond the 90-day time limit prescribed in the *Act*.

[6] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) authorizes the Board to decide any matter before it without holding an oral hearing. In July 2021, the parties were informed that the Board had decided that it would determine this matter on the basis of written submissions.

The parties were provided with an opportunity to make further submissions, which they did.

[7] A review of the subject matter of this complaint and of both parties' submissions leads me to conclude that timeliness deprives the Board of jurisdiction to hear this complaint. It was made beyond the 90-day time limit set out at s. 190(2) of the *Act*. Given this conclusion, it is unnecessary for me to examine the additional grounds for dismissal raised by the respondent.

[8] I am cognizant of the fact that this outcome will be of little solace to the complainant, who feels that he lost out on an opportunity to grieve the non-renewal of his term. However, the 90-day time limit prescribed in s. 190(2) of the *Act* for making an unfair-labour-practice complaint is mandatory, and the Board has no discretion to extend it. The complaint must be dismissed.

II. The complaint before the Board, and its procedural history

[9] The complainant is a former term employee who was employed by the CRA from December 2015 to September 30, 2016. The respondent was his bargaining agent.

[10] On November 2, 2016, he emailed a grievance presentation form to a UTE representative who is now deceased but whose actions and statements are at the heart of the complaint before the Board. The complainant sought to grieve the non-renewal of his term employment.

[11] More than three years later, on November 25, 2019, the complainant made his complaint under s. 190(1)(g) of the *Act*, alleging that the respondent had committed an unfair labour practice within the meaning of s. 185.

[12] The complainant identified May 17, 2019, as the date on which he knew of the matter giving rise to the complaint.

[13] The submissions that the complainant filed in support of his complaint are very brief, contain little in the way of description or argument, and are largely composed of past email exchanges relevant to his claims. Accordingly, a description of the complaint currently before the Board is inextricably linked to the procedural history that allowed much of the following description of events to come to light.

[14] In its response, the respondent invited the Board to dismiss the matter on the basis of written submissions. It raised four grounds. Two relate to the Board's jurisdiction. They are timeliness and the fact that the complainant was not an "employee" entitled to file a grievance under the collective agreement or the *Act* and thus was not an employee that the respondent could have wronged. The remaining grounds are the complainant's failure to identify the corrective action he seeks and the absence of evidence to support an allegation that the respondent committed an unfair labour practice.

[15] In his reply, the complainant clarified the nature of his complaint, indicating that the matters that gave rise to it were his exchanges with the UTE representative in 2016 and 2017 and not his exchanges with others at the UTE that occurred when he sought to have his case reopened in 2019.

[16] On July 30, 2021, the Board advised the parties of its decision to rule on this matter on the basis of written submissions. In that same communication, it summarized the four grounds for dismissal that the respondent raised, and it invited additional written submissions. The complainant filed very brief additional submissions that amounted to an invitation for the Board to contact management at his former place of work for additional evidence. The respondent filed additional submissions in support of its request for dismissal.

[17] The Board subsequently formulated requests addressed to each party requiring them to file documents to which they referred in their submissions but had not filed with the Board. The respondent was asked to file an excerpt of the collective agreement that it referred to in its submissions, while the complainant was asked to file the exchanges with the UTE representative that he referred to in his submissions and to provide details of the exchanges that he wished to rely on in support of his complaint. On September 20, 2021, additional documents were received from both parties, including emails from the complainant revealing his written exchanges with the UTE representative between November 2, 2016, and February 27, 2017.

[18] The documents and submissions that the parties filed provided additional context, which is detailed in the following paragraphs.

[19] On November 2, 2016, the complainant sent a grievance referral form to the UTE representative. The UTE has no record of a grievance being filed.

[20] On February 23, 2017, the complainant wrote the UTE representative, stating as follows: "… you told me that you couldn't fight for me because the office is moving… Would it still be possible for me to get a new offer anywhere in the building?"

[21] The following day, the UTE representative responded, stating, "Much of the office is set to be gone as of March 31st. No terms are being extended beyond then. The only thing that might be available is working in T1 until the end of June. I will let them know you are interested, if you would like."

[22] Over the following days, the UTE representative confirmed in writing that he had conveyed the complainant's interest in term employment to CRA management but indicated that management had "… to place all the [workforce adjusted] people first and then they will go to the rehire lists."

[23] No further email exchanges between the complainant and the UTE representative were filed with the Board. The UTE representative passed away in July 2018.

[24] According to an email sent by the complainant to the UTE in January 2020, on March 17, 2019, an acquaintance informed him that his former workplace had never "shut down". In an email to the respondent in January 2020 describing the information that he obtained from this acquaintance, the complainant indicates having "… no evidence of this being true or not."

[25] On May 16, 2019, the complainant wrote to the UTE:

> *… I was wrongfully let go over 2 years ago but couldn't file a grievance because … my union representative at the time, informed me that the office … would shut down. He also told me that I would be placed in a rehire list and haven't heard anything from them since….*

[26] The following day, a senior labour relations officer at the UTE informed the complainant that he was "… well beyond the time limits for exercising recourse …", notably, the 25-day time limit for filing a grievance. He was also informed that he was no longer considered an "employee" for the purposes of exercising recourse because he had not been employed by the CRA for over two years.

[27] In subsequent email exchanges that same day, the complainant explained that he had recently met with an employee of the federal government and stated the following:

> … [that employee] *told me that he does not believe that the … office shut down …. He suggested that I still try to do something about it even though it has been over 2 years so I thought my best option at this time would be to communicate with a union representative. I also trusted* [the UTE representative]. *It is only recently that I learned what he informed me of was probably completely false.*

[28] The conversation that the complainant refers to appears to be the one described as having occurred on March 17, 2019.

[29] On May 23, 2019, the complainant wrote to the UTE senior labour relations officer and urged him to "re-open [his] case". In another email exchange on that same date, the complainant expressed his opinion that it seemed that he had been "robbed", "lied to", and "penalized" because the UTE representative had not "done his job" in 2016. The officer informed him that for reasons previously explained, the "… matter cannot be pursued within exist [*sic*] recourse models."

[30] In summary, the complaint made to the Board and the complainant's brief submissions set out two grounds for his unfair-labour-practice complaint. He argues that the UTE representative failed to file a grievance on his behalf in 2016, despite promising to. He also submits that the UTE representative misled him into believing that an alleged closure of his former workplace prevented the representative from pursuing his grievance.

[31] Although not expressed in these terms, the complainant's submissions with respect to this second ground seem to suggest that upon speaking with an acquaintance in early 2019 and learning that his former workplace had not closed, he began to question the representation offered to him in late 2016 and early 2017. His opinion is that he was lied to and that he was deprived of an opportunity to grieve the non-renewal of his term employment.

III. Issues

[32] Although the respondent identified numerous grounds on which this complaint should be dismissed, I will first consider whether it is timely. Specifically, I must

consider whether the complaint was made within 90 days after the date on which the complainant knew or ought to have known of the facts giving rise to it; see *Paquette v. Public Service Alliance of Canada*, 2018 FPSLREB 20, and *Ethier v. Correctional Service of Canada*, 2010 PSLRB 7 at para. 18.

IV. Reasons

[33] Four provisions of the *Act* make up the statutory backdrop against which this complaint must be assessed.

[34] Subsection 190(1)(g) of the *Act* requires the Board to examine and inquire into any complaint made to it that an employee organization such as the respondent has committed an unfair labour practice within the meaning of s. 185. In turn, s. 185 defines "unfair labour practice" as meaning anything prohibited by several other provisions. Section 187 is one of those provisions and is the one applicable to the complainant's allegations. It reads as follows:

> ***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.*

[35] Lastly, s. 190(2) of the *Act* sets out the time limit for making complaints under s. 190(1), including unfair-labour-practice complaints. They must be made to the Board no later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the actions or circumstances giving rise to the complaint; see *Tyler v. Public Service Alliance of Canada*, 2021 FPSLREB 107 at para. 155, and *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90 at para. 32.

[36] The wording of s. 190(2) is mandatory. No provision of the *Act* allows the Board to extend the 90-day period; see *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78 at para. 55, and, more recently, *Paquette*, at paras. 29 and 30.

[37] The complainant made this unfair-labour-practice complaint on November 25, 2019.

[38] As previously indicated, in his reply, the complainant identified two circumstances giving rise to his complaint. One relates to his 2016 and 2017 exchanges

with the UTE representative with respect to the filing of a grievance while the other relates to a March 2019 discovery of the misleading nature of statements made by the representative in 2016 and 2017. Those circumstances will be addressed in turn.

[39] The first circumstance giving rise to the complaint was the UTE representative's failure to file a grievance on the complainant's behalf. The complainant's 90-day window for making an unfair-labour-practice complaint began on the date that he knew or ought to have known that the UTE representative had not filed the grievance.

[40] Under the applicable collective agreement, a grievance must be filed within 25 business days of the event or decision being grieved. Had the UTE agreed to file a grievance on the complainant's behalf, it had to be filed by November 7, 2016, which was 25 days after the complainant's term employment ended.

[41] The complainant places significant emphasis on a promise that he states the UTE representative made to him. Email exchanges that the parties submitted do not shed light on whether the UTE representative made such a promise. Although the complainant's reply indicates that he has evidence of such a promise, he did not file a document containing such a promise or undertaking. Regardless of whether such a promise was made, the email exchanges filed by the parties reveal that by February 23, 2017, the complainant clearly knew that the UTE representative had not pursued his case and had no intention of doing so. An email that the complainant sent to the representative on that date contains a statement indicative of his knowledge of the fact that the representative had not filed and would not file a grievance ("So you told me that you couldn't fight for me …".).

[42] Using this first of the two circumstances giving rise to the complaint as a marker, the complainant knew or ought to have known of the matter giving rise to it on November 7, 2016, or February 23, 2017. Therefore, he was undeniably and significantly beyond the 90-day mandatory time limit when he made an unfair-labour-practice complaint on November 25, 2019.

[43] The only argument that could conceivably serve as an explanation for such a delay in filing a complaint — were it accepted — is the complainant's claim that, in March 2019, he discovered that the UTE representative had misled him in 2016 and 2017 about the future of his former workplace, which in turn led him to believe that a grievance could not be pursued for that reason. Although not expressed that way, one

can deduce from his brief submissions that he takes the position that were it not for these erroneous or misleading statements made in 2016 and 2017, he would have actively pursued his efforts to have his grievance presented at the time. The March 2019 discovery of the UTE representative's allegedly misleading statements constitute the second circumstance he identified as giving rise to his complaint.

[44] Unfortunately for the complainant, a timeliness analysis of this second circumstance leads me to the same conclusion — the complaint was made beyond the 90-day mandatory time limit for making an unfair-labour-practice complaint.

[45] Although the complainant identified May 17, 2019, on his complaint presentation form as the date on which he knew of the matter giving rise to his complaint, he has also identified March 17, 2019, as the date on which he learned of the allegedly misleading nature of the UTE representative's statements. Using either of these dates for the purposes of calculating the 90-day time limit for making a complaint, the complaint was untimely. It was filed with the Board on November 25, 2019, more than 90 days after both dates identified above.

[46] The complaint is untimely and must be dismissed. Accordingly, it is not necessary for me to examine the remaining grounds advanced by the respondent.

[47] For the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[48] The motion to dismiss the complaint on the basis of timeliness is allowed.

[49] The complaint is dismissed.

December 21, 2021.

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