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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

JILL ANDREWS

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Andrews 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: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Guido Miguel Delgadillo, Public Service Alliance of Canada

Decided on the basis of written submissions,
filed July 13 and 27, 2021.

REASONS FOR DECISION

I. Complaint before the Board

[1] Jill Andrews (“the complainant”) made a complaint to the Federal Public Sector Labour Relations and Employment Board (“the Board”) against her bargaining agent, the Public Service Alliance of Canada (“the respondent” or PSAC), for failing to fairly represent her in her dealings with her former employer, the Department of Fisheries and Oceans. She was terminated from her employment. When she sought to grieve the termination five months later, the respondent did not support her.

[2] In response to the complaint, the respondent submits that it duly fulfilled its duty of fair representation and explained why it had not supported the complainant’s grievance.

[3] Pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), I have decided that I have sufficient material to render a decision on the basis of the written submissions. I have taken the complainant’s allegations as true, I have accepted the respondent’s unchallenged explanations for its actions, and I have taken into account the complainant’s reply to these explanations.

[4] The issue I must decide is whether, taking all the complainant’s allegations as true, there is an arguable case that the respondent acted in an arbitrary manner or in bad faith. I find that the complainant has not presented an arguable case that the respondent acted in an arbitrary manner or in bad faith. Therefore, the complaint is dismissed.

II. Complaint**A. The complainant’s allegations**

[5] The complainant worked for the Department of Fisheries and Oceans until she was terminated effective January 31, 2020. She was a member of a bargaining unit represented by the respondent. The component of the respondent that represents her workplace is the Union of Health and Environment Workers (UHEW). For the purposes of this decision, the UHEW’s actions are those of the respondent.

[6] The complainant acknowledges that the UHEW learned of her termination only in July 2020 but states that, in the five months following her termination, she had difficulty processing the events and was busy compiling documents concerning the employer's conduct. When she contacted the respondent in July 2020 to file a grievance, it indicated that it was too late to file one. The complainant states that she learned from a Board employee that it was possible to apply for an extension of time; she alleges that the respondent never informed her of that possibility. When she did request that the respondent apply for an extension of time, in February 2021, she received no response.

[7] The complainant submits that the respondent's failure to explain the grievance process, failure to advise her of the possibility to apply for an extension of time to file a grievance, and failure to respond to her request in February 2021 amount to bad faith and arbitrary conduct.

[8] Section 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the Act") provides 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.

[9] The complainant requests as remedy that the bargaining agent provide her with legal counsel to apply for an extension of time to grieve her termination and, if she is successful in that application, legal counsel to grieve the termination.

B. The respondent's response

[10] According to the respondent, the UHEW first became involved with the complainant around the beginning of June 2019 (while she was on leave without pay pending a fitness-to-work evaluation). She had contacted Chris Aylward, PSAC's national president, who had arranged for her to meet with UHEW representatives. A teleconference was held with the complainant, which was attended by Mark Hockley, Service Officer, UHEW; Robert Chafe, Regional Vice-President for the Newfoundland/Labrador region; and Shimen Fayad, National President, UHEW.

[11] The teleconference dealt with the fitness-to-work evaluation and the recourses she might have for several workplace issues. An email followed to summarize the discussion.

[12] According to the respondent, the fitness-to-work process ran its course when the complainant's treating physician deemed that she was able to return to work. However, in the meantime, she had moved to Ottawa, Ontario, and was requesting that the employer move her position from St. John's, Newfoundland, to Ottawa or allow her to telework. The employer insisted that she had to return to work in her position in St. John's. She did not, so the employer sent her a letter outlining four options: return to work at her office in St. John's, resign, retire, or submit a leave request.

[13] The complainant was first given October 16, 2019, as the deadline to respond to the options letter; the employer extended it to December 10, 2019. On December 9, 2019, Richard Dollimount, a UHEW representative, asked the employer for another 30-day extension for the complainant to make a decision. It was granted.

[14] On January 13, 2020, the employer gave the complainant one last opportunity to respond, by January 31, 2020. If she did not respond, she would be terminated for abandoning her position.

[15] On January 22 and 23, 2020, the complainant had some exchanges with Ms. Fayad. The UHEW was concerned with her precarious situation; the complainant asked what would be required from her to file a grievance, should it become necessary.

[16] On January 24, 2020, Mr. Hockley answered. He told her that she should immediately inform the UHEW of her termination when it occurred and that the UHEW would file a termination grievance on her behalf, with her consent.

[17] Despite this, the complainant did not contact the UHEW for several months. According to the respondent, she first contacted it with news of her termination on August 7, 2020. Ms. Fayad answered that the UHEW had never received the termination letter and that it might be too late to file a grievance.

[18] On September 2, 2020, Mr. Hockley wrote to the complainant. He stated that given the time that had elapsed, the UHEW was unable to file a grievance on her behalf.

[19] The complainant again contacted the UHEW in January 2021 and asked for her case to proceed, but the UHEW maintained that it would not file a grievance, given the time limits. She then asked it to file a wrongful-dismissal claim.

[20] Mr. Hockley wrote a letter to the complainant on or around January 27, 2021, explaining why it would not file a claim, why the grievance was out of time, and why her justification for the delay would not affect the time limits.

[21] The respondent acknowledges that it did not correspond with the complainant after that date, despite receiving a text from her on February 5, 2021, in which she indicated that she was finalizing her documentation to go with a grievance and stating her rationale for an extension, along with another text on February 16, 2021 requesting a paper copy of the collective agreement.

[22] The respondent submits that it did not fail in its duty to fairly represent the complainant. It indicated to her that it would file a grievance as soon as it received a copy of the termination letter. She did not inform it of her termination when it happened.

[23] The respondent did consider the possibility of applying for an extension of time to file the grievance, as shown in its September 2, 2020, correspondence to the complainant. For the reasons given in that correspondence, the delay was too excessive and could not be justified.

[24] According to the respondent, nothing in these actions was arbitrary or done in bad faith. It considered the situation seriously, examined and detailed the recourses available to the complainant in response to her workplace issues on several occasions, and outlined the grievance process and what was required of her. When the complainant informed it of her termination, the respondent also turned its mind to the option of an extension of time to present a grievance and informed the complainant of its position.

[25] The respondent disputes that the complainant requested that it make an application for an extension of time to file the grievance. It submits that the text that it received on February 5, 2021, only stated that she was preparing her documents for a grievance and that her rationale for the extension was the time that it took. The text

did not request that the respondent file an application for an extension of time nor did the complainant request a response to her message.

C. The complainant's reply

[26] The complainant retained from the January 24, 2020, email concerning an eventual grievance if termination should occur, an action item for her to detail the events leading to the termination, to refute the employer's specified reason. She was under the impression that a grievance and the supporting documentation had to be submitted at the same time. She claims that she was unaware of the option of making a request for an extension of time until she contacted the Board on February 5, 2021 and, as a result and on that same day, made a request to the respondent to file a request for an extension.

[27] The complainant believes she properly asked for the respondent to file an extension of time application on her behalf, through her text message.

III. Analysis

[28] In order to find that the respondent failed in its duty of fair representation of the complainant, I would have to find that, in the words of the relevant legislative provision, it acted "in a manner that is arbitrary or discriminatory or that is in bad faith..." (s. 187 of the *Act*). Given the facts presented by both parties, I cannot find that the respondent failed in its duty to fairly represent the complainant.

[29] The jurisprudence of the Board and its predecessors is clear: the complainant's disagreement with the way the bargaining agent handled the case is not the standard applied to the bargaining agent's actions (see *Mangat v. Public Service Alliance of Canada*, 2010 PSLRB 52; *Bergeron v. Public Service Alliance of Canada*, 2019 FPSLREB 48; and *Boudreault v. Public Service Alliance of Canada*, 2019 FPSLREB 87). Rather, the Board considers whether the bargaining agent's actions were "...fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee." (*Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509 at 527).

[30] There is no discrimination allegation in this case. The complainant alleges arbitrary and bad faith conduct by the respondent. According to her, this is shown by 1) the UHEW not informing her properly of the grievance process; 2) the UHEW not

informing her of the possibility of applying for an extension of time to file the grievance; and 3) the UHEW ignoring her request to make such an application with the Board.

[31] In her reply, the complainant did not refute the respondent's assertions that it indeed explained the grievance process to her and that it offered to file a grievance as soon as it received a copy of the termination letter. She focused instead on the fact that the UHEW told her that she would need to have detailed allegations for her grievance. Clearly, there was a misunderstanding, but I cannot fault the respondent for it. The complainant did not send the termination letter to the UHEW as soon as she received it, as it had advised her to.

[32] When the complainant did contact the respondent some five months later, she was told that it was too late to file a grievance. While the respondent did not inform her of the possibility of applying for an extension of time, according to its September 2, 2020, correspondence, it is clear that it turned its mind to the issue and considered it, including that the delay was too long and unexplained.

[33] I do not doubt that the complainant thought that by her brief text to Ms. Fayad, stating that her documentation was ready and that the time it had taken justified the extension, she was in fact asking the respondent to apply for an extension of time.

[34] I also understand why the respondent did not see in this text a request that it act on the complainant's behalf. Nothing in the text requests any action from the respondent; it seems to simply have been provided as information. Again, it was a misunderstanding, but I cannot fault the respondent for it. On two separate occasions, it had already clearly stated that, given the five-month delay, it would not be pursuing a grievance on her behalf. This was not carelessness or bad faith; it was the respondent's estimation of the situation, based on its consideration of the situation, the collective agreement, and the application of the law.

[35] The respondent helped the complainant while it could, starting in June 2019, by meeting with her, discussing her case, and advising her on different matters, including the fitness-to-work evaluation. It negotiated a 30-day extension for her to consider her options. It contacted her toward the end of January 2020 to tell her that she was risking termination and that if it occurred, she was to inform the respondent immediately so that the time limits of the grievance process would be preserved.

[36] The complainant states that she could not document her grievance and respect the time limit. Yet, she did not contact the respondent about the dilemma. Despite the late January 2020 exchanges between the complainant and the respondent, she failed to inform it of her termination. I cannot fault the respondent for that failure; nor can I make a finding of bad faith or arbitrary conduct against it. Its representatives were ready and willing to act on the complainant's behalf. She did not allow them that opportunity at the proper time.

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

(The Order appears on the next page)

IV. Order

[38] The complaint is dismissed.

December 20, 2021.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**