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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

ROSIE GAGNON
Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as
Gagnon v. Canadian Association of Professional Employees

In the matter of complaints 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: Émile Arsalane

For the Respondent: Jean-Michel Corbeil, counsel

Heard via videoconference,
October 18 and 19, 2021, and March 8 to 11, June 21 to 23, and August 29, 2022.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Complaints before the Board

[1] On January 5, 2021, Rosie Gagnon ("the complainant") made a complaint (file no. 561-02-42426) with the Federal Public Sector Labour Relations and Employment Board ("the Board") against the Canadian Association of Professional Employees ("the respondent"), the bargaining agent that represents the bargaining unit she belonged to. She worked for the Translation Bureau, which, for the purposes of this decision, is the employer. The legal employer, the Treasury Board, delegated its human resources management authorities to it. The employer terminated her employment while she was still on probation.

[2] She submitted that the respondent did not adequately support her in contesting the employer's decision to terminate her employment. On January 5, 2021, she also made a second complaint (file no. 561-02-42433), against Stéphanie Beaulieu, a revisor in Parliamentary Debates and a shop steward. She alleged that although Ms. Beaulieu's shop steward role was to help bargaining unit members, instead, she collaborated with the employer in a process that led to the rejection on probation.

[3] Both complaints were made under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which deals with unfair labour practices, and specifically s. 187, which defines as follows the bargaining agent's duty to fairly represent bargaining unit members:

> ***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.*

[4] For the reasons that follow, I conclude that the complainant did not demonstrate to me that the respondent acted in an arbitrary or a discriminatory manner or in bad faith in representing her. She also failed to demonstrate that Ms. Beaulieu acted in any way that would make the bargaining agent liable. Accordingly, both complaints are dismissed.

II. Summary of the evidence

[5] The complainant testified and called as a witness Bernard Desgagné, a translator-revisor in Parliamentary Debates.

[6] The respondent called as witnesses Ms. Beaulieu; Isabelle Germain, Labour Relations Officer with the respondent; and Isabelle Petrin, Senior Labour Relations Officer, also with the respondent.

[7] To organize the evidence coherently, I will address in turn the different issues that were raised.

A. The complainant's employment

[8] On May 1, 2019, the complainant was hired as a translator at the TR-02 level in Parliamentary Debates.

[9] Parliamentary Debates translators are subject to special working conditions. They must translate House of Commons and Senate debates on the same day they are held, to produce an accurate translation of the proceedings by the next morning. The work hours are from 4:00 p.m. to midnight, but during busy periods such as May and June, the hours may extend to the early morning and beyond.

[10] In busy periods, the number of words to translate increases significantly. Although the typical number of words to translate in Parliamentary Debates is 2500 per day, it can increase to 6000 or even 8000 during the end-of-session period. Parliamentarians may sit later, which increases the translators' workload.

[11] The complainant began her public service career as a translator during that rather hectic period. Before then, she had worked as a translator in the private sector. She achieved a certain level of proficiency to pass the exam that placed her in a TR-02 position, the entry-level position being TR-01.

[12] She testified that the manager who hired her, Anik Bard, implied that in the first year, newly hired translators were not expected to translate 2500 words per day. Instead, the expectation was 1800 words, reaching 2500 words by the end of the year. Ms. Bard did not testify at the hearing, and I have no independent confirmation of those remarks.

[13] However, based on word-count documents filed at the hearing, the complainant translated far more than 2500 words per day in May and June. Therefore, those first 2 months were very difficult for her. During the summer, when Parliament was on recess, she worked in the Parliamentary Documents unit.

[14] Some criticism was made of the complainant's translations. She did not always seem to grasp the context or content of the texts to translate. Her use of machine translation accentuated the problem. That approach is not prohibited at the Translation Bureau. In fact, it is encouraged, but translators must use it wisely and revise their texts carefully to avoid its inevitable pitfalls. The evidence includes notably an exchange between Catherine Leduc, Revisor, and Benoît Laflamme, Acting Manager, about the quality of the complainant's translations.

[15] From June 2019, talk arose of an action plan to support the complainant. In October 2019, Mr. Laflamme informed her that one would be put in place for her, to help her improve. She would have to complete certain steps, and three experienced revisors would coach her, including Mr. Desgagné.

[16] Mr. Desgagné testified at the hearing. He explained that he was asked to revise the complainant's texts, to help her. He revised some of hers in May and June. He noted some translation problems, which he felt were due to a lack of experience and knowledge, and her tendency to rely too heavily on machine translation.

[17] In October 2019, he and two other revisors were tasked with revising the complainant's texts. From October to December, Parliament was not in session because of the election. Therefore, there were very few texts to translate. The House resumed sitting in December.

[18] Parliamentary debates are translated in blocks. Each translator is given a passage of about 200 to 300 words to translate. Revisors, who are translators at the TR-03 level, always revise completed translations.

[19] Mr. Desgagné testified that he noticed progress in the complainant's work and that she was attentive and receptive to his comments. Room for improvement remained, and he encouraged her to take more time and care when translating and especially when revising her blocks. All in all, he thought that she was well on her way to meeting the action plan's requirements.

[20] In March 2020, the complainant went on sick leave. When she returned on March 31, 2020, her manager informed her that she was terminating her employment during the probationary period. According to the manager, the action plan did not sufficiently improve the complainant's performance. The termination letter (rejection on probation) was dated April 17, 2020. The rejection on probation was effective April 24, with an additional month's pay.

[21] That was a summary of the complainant's work history, to provide context for her complaint against the respondent. The rejection on probation was grieved. That grievance is not before me. The issue before me is not whether the employer was correct or incorrect in rejecting the complainant on probation. Rather, the issue before me is determining whether the respondent acted in an arbitrary or a discriminatory manner or in bad faith when it represented her.

[22] I must add one final thing to the complainant's employment summary that she believes was a factor in her rejection on probation.

[23] The complainant is a long-time vegan, meaning that she does not consume any animal products. This came to light because the employer orders and pays for a meal for Debates translators when the work period exceeds regular hours. That happened in May and June 2019.

[24] At the hearing, the complainant adduced as evidence many email exchanges that she said show the difficulties she had obtaining a vegan meal. Actually, the emails show the efforts that the person in charge of ordering the meals made to accommodate the complainant's requests. Veganism rules are often unknown to those who do not practise the lifestyle. At one point, in an apparent effort to please everyone, the manager contracted a sandwich supplier that was not usually used. She tried to respect the vegan diet as she understood it, based on the following excerpt from her email:

> [Translation]
>
> … *I would like to clarify that other than mayonnaise, the sauces at* [the restaurant] *do not contain eggs, dairy, or animal fat. I contacted* [the restaurant's] *head office, and other than the cheese bread, the other breads contain no eggs, dairy, or animal fat.*
>
> *The sauces will be on the side, along with condiments containing vinegar. There are "veggie delite" sandwiches without cheese.*

…

[25] The manager did not testify at the hearing, so I do not know how much further she looked into whether the ingredients were derived from animals. At first glance, the sandwich selection appeared to include vegan options. It did not. Some breads (the ingredient details were adduced as evidence) contained honey, which vegans do not consume because it is produced by exploited and mistreated animals. (In cross-examination, the complainant stated that the insect pollination that produces fruits and vegetables is not animal exploitation.) Other breads contained skim milk powder. Some sauces contained dairy products.

B. Ms. Beaulieu's actions

[26] Ms. Beaulieu, like Mr. Desgagné, is a translator-revisor at the TR-03 level in Parliamentary Debates. In that capacity, she revised the complainant's translation blocks. She was quite critical of the translation quality and found that the complainant did not take the necessary care and time to ensure quality.

[27] The complainant adduced as evidence an email from Ms. Beaulieu that she believed illustrated her curt and unkind tone. Bear in mind that the email is dated June 11, 2019, which was the height of the period in which all the translators were working very long hours under very demanding conditions. The email reads as follows:

> [Translation]
>
> *Subject: Block 49 in the Senate*
>
> *Hello Rosie,*
>
> *Although you are new, I think that you have been here long enough to know that you do not retranslate a quote that already has an official translation. The translator's responsibility is to find and reproduce the quote as is.*
>
> *In this case, the block specifically gave you the quote's source: the Chiefs of Ontario brief* [a hyperlink in the original text]*. No research was required; you simply had to retrieve the document from the list of briefs submitted to the Senate on Bill C-92. If you did not know how, you simply had to ask for help, and someone would have shown you where to look (in this case, you go to the Senate committees site and then select* Briefs *in the menu).*
>
> *With evenings being what they are right now, we really need the translators to carry out their own research and demonstrate it correctly. Otherwise, we have to redo the work, which adds to our workload. So, I encourage you to take the time to do your job well, which will make our job that much easier.*

> *Thank you!*
>
> …

[28] The complainant responded, defending herself as follows:

> [Translation]
>
> *Hi Stephanie,*
>
> *I always do my research. I did the research and found the document in question only in English. I tried to find the French version, but could not. I also tried to change the "e" in the address to an "f" and an "fr". I figured that since it was an Ontario organization, there was no translation.*
>
> *Thank you, and sorry,*
>
> *Rosie*

[29] She also forwarded both emails to her manager, stating, "[translation] … a little more leeway from certain revisors would do me a world of good emotionally".

[30] At the hearing, when Ms. Beaulieu was asked about that exchange, she seemed taken aback somewhat. It was clear from her testimony and professional background that she is demanding of others as well as herself. She said that the email to the complainant was part of her duties. She pointed out an error and used an opportunity to educate and to explain how to correct it. She expected a simple "thank you" in response.

[31] She is also a shop steward (Mr. Desgagné is the other steward in Parliamentary Debates). In that role, she liaises between the employer and the respondent. The steward is the bargaining agent's witness to the day-to-day work situation, reports labour relations problems to the bargaining agent, and can answer employees' questions. However, the steward is not expected to represent an employee in a grievance or complaint. That task falls to the bargaining agent's labour relations officers.

[32] In June 2019, the manager, Ms. Bard, met with the complainant to discuss some matters. According to the complainant, the meeting was disciplinary. She was criticized for not being friendly enough in her emails and was spoken to about her vegan requirements. There is no documentary evidence of a disciplinary meeting.

[33] Ms. Bard asked Ms. Beaulieu to attend the meeting as a witness and shop steward. She and the complainant remembered the meeting, and even their respective positions, differently. The complainant recalled that Ms. Beaulieu sat opposite her, as did Ms. Bard, although Ms. Beaulieu recalled being next to her.

[34] In December 2020, the complainant asked Ms. Germain to contact Ms. Beaulieu to obtain a record of that meeting. She provided the following details of the June 2019 meeting:

> [Translation]
>
> *… Anik asked me to attend the meeting as a witness to protect Rosie's rights. I basically sat back and let them talk to each other.*
>
> *They talked about Rosie's attitude in her interactions, specifically in emails. Rosie said that she did not realize the impression that her communications were leaving. Next, they discussed strategies to correct the situation.*
>
> *The late-night meals were also discussed; I can't recall which of the two of them brought that up. Anik explained that she had to provide a meal for all employees but that she did not have to accommodate everyone's dietary restrictions (Rosie has a special diet) as that would be too demanding, logistically speaking. However, she did say that she makes reasonable accommodations to ensure that everyone can eat, such as selecting specific options (e.g., vegetarian pizza) or allowing some people to request dishes that cost a bit more than the limit set out in the collective agreement. Several other possibilities were mentioned by both sides, but my memory is fuzzy, probably because the conversation did not delve into it.*
>
> *I felt that the meeting ended on a friendly note. Everyone seemed to be on the same wavelength.*

[35] The complainant testified that she felt that Ms. Beaulieu was more on Ms. Bard's side at the meeting. She clearly felt that she was being criticized for her tone in emails, for not being cheerful enough, and for the difficulties that her meal choices caused.

[36] Ms. Beaulieu was asked to replace Ms. Bard for a while. At the hearing, she explained that she did so rather reluctantly, as she was mindful of her shop steward role. For that reason, she asked that her responsibilities be very limited, to avoid conflicts of interest.

[37] At the hearing, the complainant adduced as evidence emails from Ms. Beaulieu to Ms. Bard about her translation problems. It appears that communication between

her and Ms. Beaulieu was strained. In an email dated June 18, 2019, Ms. Beaulieu wrote the following to Ms. Bard:

> [Translation]
>
> *This is really not going well. Aside from the comprehension errors and poorly written sentences, the research is not done, even when it is simple (consider the title of the Berger Commission Report in my Senate example).*
>
> *I'm not exactly sure how to make her understand that she has to be more diligent and do her own research.…*

[38] Because it was pointed out in Ms. Beaulieu's cross-examination, I note that she sent the email shortly after Ms. Bard announced that she would order sandwiches in an effort to respect the choices of those who did not consume animal products. Ms. Beaulieu did not recall reading the email about the sandwiches order.

[39] On June 21, 2019, she emailed Ms. Bard. The subject line was "[translation] And the third". The first paragraph reads as follows:

> [Translation]
>
> *I find it appalling that she turned in this kind of work, especially under the current conditions. Given the delay, Rosie had plenty of time to slow down and rework the text, even if it meant putting it aside and returning to it later. I definitely spent more time revising than she did translating and rereading ….*

[40] It appears that the other two emails to which the "[translation] And the third" seems to refer also addressed shortcomings in the complainant's work.

[41] At the hearing, the complainant adduced as evidence several exchanges between Ms. Beaulieu and Ms. Bard, to establish that they were close. I do not doubt that their relationship was friendly. That does not lead me to conclude that they conspired to cause the complainant to lose her job. The only written exchanges about the complainant are about her work. As a revisor, Ms. Beaulieu had to inform the manager, Ms. Bard, about the problems noted as the complainant was on probation. There is also the fact that Ms. Bard asked Ms. Beaulieu to attend the June meeting, but it appears that that was rather impromptu.

[42] The complainant tried to establish that Ms. Beaulieu was largely behind the action plan and that her complaints were the cause. Yet, Mr. Desgagné seemed in

favour of an action plan, and their assessments of the complainant were quite similar. He wrote the following to Ms. Germain (supporting the complainant):

> [Translation]
>
> …
>
> *When Rosie arrived in Parliamentary Debates in May 2019, the workload was very high. The TR-3 who coached her, Jean-François Baril, quickly judged that she could keep up with the hectic pace. However, I do not think that he really had the time to carefully review her translations, which relied on machine translation and so-called "post-editing" to manage translating the astronomical number of words required of her.*
>
> …
>
> *Between May 29 and June 18, 2019, I revised 25 blocks of House of Commons debates that Rosie translated, or approximately 5000 words. I found a large number of meaning errors. Clearly, she did not always understand the English text. I mentioned this to Jean-François Baril and to Thomas Ouellet, who is the TR-4 at Debates. But because our workload was so heavy at the time, her case was not addressed until October 2019… her performance was deemed unsatisfactory. I agreed to coach her.…*
>
> *… I found that given her young age and inexperience, Rosie occasionally struggled to understand the English text. In addition, as she had become accustomed to post-editing since early on in her studies, she also had a hard time rendering ideas clearly, choosing the right vocabulary, and properly structuring her sentences. In short, she had significant weaknesses that are not uncommon among inexperienced translators. I always wondered how she passed the TR-2 exam and was hired by the Translation Bureau. In my opinion, she did not have the necessary skills and should have been hired as a TR-1 in a unit other than Parliamentary Debates.…*

[43] One evening in February 2020, the complainant decided to take her laptop home to work from home the next day because inclement weather was forecast. Ms. Beaulieu ran into her and informed her that she required the employer's express permission to telework; the employee could not just decide to do it.

[44] Ms. Beaulieu went on sick leave in fall 2020. She was in contact with Ms. Germain about the June 2019 meeting, and on January 6, 2021, they spoke on the telephone. The notes from that conversation were adduced into evidence at the hearing. I will return to this later.

C. Ms. Germain's actions

[45] On April 1, 2020, the complainant contacted Ms. Germain, the respondent's labour relations officer, first by telephone and then by email. In a lengthy email, she explained her hiring, working conditions, the action plan, and finally, the announcement that the manager, Valérie Chevrier, made on March 31, 2020, informing the complainant that her employment would end on April 24, 2020. She said that at the time, she was just back from medical leave. She added that her main revisor, Mr. Desgagné, said that he was very surprised by the rejection on probation, which he confirmed at the hearing.

[46] On Thursday, April 2, 2020, Ms. Germain replied by email. She wrote that she would contact Labour Relations to find out if a transfer to another position was possible. She also mentioned the possibility of filing a grievance. She suggested calling her the following Monday.

[47] On April 3, 2020, Ms. Germain wrote to her again, stating that the termination letter was not yet written and that it was still just a recommendation.

[48] On April 8, 2020, the complainant asked if there was any news. On April 9, Ms. Germain replied that unfortunately, management would not change its mind. She proposed filing a grievance on the grounds that the decision was arbitrary. She asked the complainant to forward the termination letter to her once the complainant received it.

[49] On April 17, 2020, the complainant emailed the letter to Ms. Germain. She wrote that the manager lied about a February 10 meeting in which she allegedly talked about insufficient blocks; the complainant argued that it was not true. The meeting did take place, but she said that the manager did not inform her about insufficient blocks. The reference to insufficient blocks was not in the termination letter or in the email in which it was sent.

[50] On April 22, 2020, the complainant forwarded an email from Mr. Desgagné, who thought that he understood the meaning of "insufficient blocks". He asked her to rework certain blocks and informed the workload allocator. He said that paying more attention to the blocks paid off and that he noticed an improvement.

[51] On April 23, 2020, Ms. Germain wrote to her, asking for the action plans as well as feedback from all the coaches. She asked again on April 28. The same day, the complainant responded as follows: "[translation] After thinking about it, I do not see how the coaches' comments would help me because their comments were not necessarily focused on my strengths but rather on my weaknesses." The same day, Ms. Germain responded tersely, "[translation] To show that it does not reflect reality. I need them." The complainant then forwarded the coaches' comments for the action plan's four steps that she completed. The fourth step ended on February 21, 2020.

[52] On April 30, 2020, Ms. Germain emailed this to the complainant:

> [Translation]
>
> *Hello,*
>
> *Here is the grievance for you to sign, date, and send to your manager. Please confirm with me when done. This grievance will be put on hold until it can be filed at the third level of the grievance process, to Lucie Séguin.*
>
> *Have a nice day,*
>
> …

[53] The grievance reads as follows: "[translation] I grieve the employer's decision to terminate my employment as of April 17, 2020."

[54] The complainant responded, "[translation] Should the reasons for the grievance not be detailed? Is just mentioning the termination sufficient?" Ms. Germain replied, "No, a grievance should remain very broad. The detail is in the arguments."

[55] The grievance was filed in early May 2020. On May 20, Nathalie Laliberté, Vice President, Services to Parliament and Interpretation, at the Translation Bureau, invited the complainant and Ms. Germain to the second-level hearing of the grievance process. According to Ms. Germain, Ms. Laliberté was the manager who refused to find the complainant another translator position when terminating her employment was being discussed.

[56] Therefore, Ms. Germain thought it best to go through that stage as early as possible as she felt that Ms. Laliberté was unlikely to change her mind and allow the grievance. Better to go to the next level, to consider an eventual referral to adjudication, after evaluating the chances of success.

[57] However, the complainant thought it better to wait until all the documentation required for the second level was on hand. That difference of opinion continued throughout their relationship, but Ms. Germain agreed to put off the hearing until the documents were received.

[58] The complainant was waiting for documents from an access-to-information request (under the *Access to Information Act* (R.S.C., 1985, c. A-1)). She informed Ms. Germain that she suspected that there might have been discriminatory reasons for the action plan imposed on her in October 2019. Ms. Germain was somewhat surprised; when filing the grievance, she asked if discrimination might have been a factor, and the complainant informed her that she did not think so.

[59] Ms. Germain wrote to the complainant that it would be difficult to amend the grievance to add discrimination. However, she said that she would see what she could do.

[60] The second-level hearing was postponed. In the months that followed, Ms. Germain and the complainant had some exchanges. In particular, the complainant communicated about her excessive workload in May and June 2019, shortly after she arrived at Parliamentary Debates.

[61] In mid-June 2020, Ms. Germain asked her if she had received any documents from her access-to-information request. She replied that she had not.

[62] On December 10, 2020, Ms. Germain wrote to her to inform her that the grievance hearing would be held in January 2021, at the employer's request. The complainant asked her to explain the grievance process. She replied with a lengthy email quoting the collective agreement. She added that the complainant could proceed on her own if she wished but that if she wanted the respondent to represent her, she would have to indicate her availability dates for the January 2021 hearing.

[63] That day, the complainant replied that the access-to-information requests were successful but incomplete. At that point, she believed that the termination was retaliation for taking sick leave and requesting accommodation. She also alleged that the action plan was put in place arbitrarily as retaliation for her accommodation request for being vegan.

[64] Ms. Germain replied that it was new information that should have been provided in the first place. She asked for more details about the missing documents as well as information about an accommodation request with justification for functional limitations.

[65] She repeated that there was enough information to go to the second-level hearing but said that she would ask for another extension; she did not know if the employer would grant it.

[66] The complainant replied that she had spoken about those facts before but that Ms. Germain had not given them any weight. She complained that the employer was slow to disclose. On December 13, she emailed Ms. Germain to state, in particular, "[translation] We are still working hard to build the case." She asked Ms. Germain to contact Ms. Beaulieu about a "[translation] quasi-disciplinary" meeting that allegedly took place in June 2019 and that Ms. Beaulieu attended as a shop steward.

[67] The email left Ms. Germain somewhat confused. She agreed to contact Ms. Beaulieu, which she did, but she did not understand the "[translation] We" in the first sentence. The respondent's internal rules state that its representation must be singular; it does not allow co-representation. But based on the complainant's emails, it appeared that she had consulted an attorney (who saw retaliation) and that she was building her case with someone other than Ms. Germain.

[68] On December 14, 2020, she sent the complainant a letter providing an update. The complainant allegedly received information through an access-to-information request that led her to believe that she had been discriminated against. However, she did not share any documentation to that effect with Ms. Germain. She did not provide any medical information for the accommodation request about her health.

[69] In that letter, Ms. Germain added, "[translation] Veganism is neither a disease nor a religious belief protected by the *Canadian Rights and Freedoms Act*." At the hearing, it was clarified that she had referred generally to human rights legislation in Canada, including the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) and the *Canadian Charter of Rights and Freedoms*, *The Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("the *Charter*").

[70] Ms. Germain asked the complainant to provide the documentation of her discrimination allegation by 5:00 p.m. on December 16, 2020.

[71] Finally, she clarified that the respondent did not offer co-representation and that a discrimination grievance could be filed only under the collective agreement.

[72] The medical accommodation request was for telework, which was granted.

[73] On December 18, 2020, Ms. Germain informed the complainant that the respondent would not argue discrimination because there was "[translation] … no prohibited ground that meets the discrimination criteria under the *Charter*". She added that the respondent would assess in early January whether the grievance would be pursued. The only ground to challenge the rejection on probation was the employer's arbitrary decision as it related to the objectives established on hiring. However, the rejection occurred during the probationary period and for employment-related reasons, which, according to Ms. Germain, are the two essential criteria.

[74] Ms. Germain insisted that the grievance proceed in February 2021. She said that she found that several information items than came out of the access-to-information request were not disclosed to the respondent. She ended the letter as follows:

> [Translation]
>
> …
>
> *So, to be clear, we filed the grievance against your rejection on probation, to protect your rights.*
>
> *To date, despite a lengthy delay and although the employer assured that all requested information about the termination of your employment was provided to you, you have not given us any documentation to conclude that the employer's decision was questionable under the applicable case law.*
>
> *A rejection on probation is valid under the case law if: 1) it is decided and occurs during the probationary period, and 2) it is for an employment-related reason.*
>
> *Your rejection on probation occurred within 12 months of being hired. Therefore, it occurred during the probationary period. The reason for your rejection on probation was related to employment, your performance.*
>
> *You will be sent an email before January 8 to confirm our intentions. You may choose to advance your grievance on your own, if you wish.*
>
> …

[75] At the hearing, Ms. Germain repeatedly stated that she would have been prepared to challenge the rejection on probation through the grievance process and that she would have used Mr. Desgagné's comments about the abrupt way the action plan ended and pointed out the unreasonable demands at the start of the complainant's employment in Debates. However, she did not have that opportunity because the complainant wanted to delay the second-level hearing, against Ms. Germain's advice. She felt that the second-level hearing was sure to have a negative outcome but that it could still yield additional information from the employer.

[76] On January 5, 2021, she wrote to Ms. Gagnon, asking her to clarify the findings she referred to in a recent email. Ms. Germain said that she was not made aware of any findings that would justify building the case. She had only the action plan, with the coaches' comments. She repeated that the grievance was to proceed to the second level in February.

[77] On January 6, 2021, she received a call from Ms. Beaulieu, who first informed her about her own situation. Then, she went on to talk about the complainant. That part of the notes from that conversation was entered into evidence at the hearing.

[78] Ms. Beaulieu's comments about the complainant are quite negative. According to the notes, she said that the complainant was incompetent, impolite, and very negative. The complainant performed her work poorly and did not reread, leaving it to others to revise her translation blocks. She also said that the complainant was unhappy with the choice of restaurants, although her "[translation] veganism choice" was always respected.

[79] At the hearing, Ms. Germain and Ms. Beaulieu testified about that conversation. Ms. Beaulieu was somewhat surprised by her own aggressive tone. She said that she would have never called the complainant "[translation] incompetent". Instead, she would have said that the complainant was not competent, which is an important nuance. At the hearing, she testified that the complainant was capable of improvement. The problem was that she was asked to perform as a TR-02, when she should have been hired as a TR-01, in the challenging Debates environment and during the busiest period. She did not meet expectations, but perhaps the fault was with the employer for having hired her directly into Debates.

[80] Ms. Beaulieu testified that at the time, she was going through a difficult time herself, and that for that reason, she was on sick leave. She had only a vague recollection of the conversation, but she stated that she was surprised by the somewhat surly tone.

[81] Ms. Germain confirmed that Ms. Beaulieu had gone through a difficult time. She said that she reliably noted what Ms. Beaulieu said; of course, she did not rule out that the words might have been exaggerated, given Ms. Beaulieu's state of mind.

[82] In any case, according to Ms. Germain's testimony, the conversation with Ms. Beaulieu did not affect the decisions made about the complainant's representation.

[83] On January 7, 2021, Ms. Germain received an email from Émile Arsalane, the complainant's spouse, stating that he was now taking over as her representative for the subsequent proceedings. He informed her that two complaints had been made with the Board against the respondent.

[84] On January 20, 2021, Ms. Petrin wrote to the complainant to notify her that the respondent was withdrawing its representation from the case. Without further information, she felt that the grievance was unlikely to succeed. The rejection on probation occurred during the probationary period, and the employer had an employment-related reason. She also noted that the complainant was now represented by Mr. Arsalane.

[85] In the letter, Ms. Petrin also explained the respondent's reasons for not filing a discrimination grievance based on veganism. She said that on one hand, veganism is not a prohibited ground of discrimination, and that on the other hand, the grievance would be filed much too late. She referred the complainant to the Canadian Human Rights Commission if she wished to pursue that option.

[86] Finally, the letter stated that the complainant could appeal the respondent's decision to end its representation. According to the evidence at the hearing, she did not pursue that option.

D. Ms. Petrin's role

[87] Ms. Petrin testified about her role as an advisor to the respondent's labour relations officers as well as her role in this case.

[88] She is a lawyer by profession and a member of the Barreau du Québec. However, she is not a practising lawyer. She is a senior labour relations officer. Her position was created in 2018 to reflect her duties for the respondent. In that capacity, she assists labour relations officers (Ms. Germain, for example) by advising them on their files and conducting more extensive legal searches.

[89] Ms. Germain sought advice from her at different times, including about discrimination based on veganism. At the hearing, Ms. Petrin explained the related research that she conducted.

[90] The collective agreement prohibits discrimination based not only on religion but also on creed ("*croyances*" in French). Ontario's *Human Rights Code* (R.S.O. 1990, c. H.19) also protects creed ("*croyance*" in French). Therefore, she turned to Ontario case law in particular but not exclusively. Based on her research, she concluded that veganism as such is not protected. According to her, veganism is a dietary choice. To be a protected ground, such a choice must be related to a religion or a medical condition. According to her, diet in itself is not a ground of discrimination.

III. Summary of the arguments

A. For the complainant

[91] At the hearing, the complainant submitted a written argument. In this summary of the arguments, excerpts that are in quotations marks are from the written argument.

1. Complaint 561-02-42426

[92] The complainant argued that the bargaining agent failed its duty to properly investigate her situation. Ms. Germain did not contact her supervisor or manager. She also did not contact the other coaches assigned to the action plan. She did not follow up with Mr. Desgagné.

[93] Before the grievance was filed, Ms. Germain asked the complainant if she had been a victim of discrimination. Ms. Germain did not consider that the complainant informed her that she had been dismissed on her return from sick leave. In addition, it was not up to the complainant to decide if discrimination occurred; instead, the labour relations officer should have been able to inform her in that respect.

[94] She submitted that the bargaining agent acted arbitrarily by "[translation] blindly" believing the employer's arguments. In that respect, she cited *McRaeJackson*, 2004 CIRB 290, and *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119.

[95] She stated that rather than investigate directly, Ms. Germain simply consulted Catherine Rousseau, an employer labour relations officer, who she said "[translation] worked to coordinate the dismissal".

[96] She stated that Ms. Germain spoke about the importance of having a good relationship with Ms. Rousseau; therefore, it is understandable that she would not question what Ms. Rousseau said. Ms. Germain asked Ms. Rousseau to negotiate with Ms. Laliberté on the complainant's behalf; how could she trust the person who likely recommended the dismissal?

[97] Ms. Germain did not properly look into the access-to-information requests. She trusted the employer's statement that the information had been provided. She hoped to receive more information from management through the levels of the grievance process. She believed the employer when it said that the decision to dismiss the complainant was made before the sick leave. She believed Ms. Beaulieu, who spoke about decreasing the complainant's workload, while the documents showed an overload.

[98] The complainant criticized her for suggesting that the grievance was unlikely to succeed and that there would be no compensation unless discrimination were proven, without considering the possibility of compensation for lost wages.

[99] The complainant asked me to rule on the bargaining agent's duties with respect to procedural fairness and natural justice. In that respect, she cited two Board decisions, *Pronovost v. Professional Institute of the Public Service of Canada*, 2020 FPSLREB 24, and *Veillette v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 58, and one Federal Court of Appeal decision, *Bremsak v. Professional Institute of the Public Service of Canada*, 2014 FCA 11.

[100] According to her, she should have received an explanation of exactly what she had to prove so that she could sort the documents she had on hand.

[101] Without knowing all the facts, Ms. Petrin decided that the grievance would not succeed. That was against the principle of natural justice that all the evidence must be heard before a decision is made.

[102] The respondent also breached natural justice when it refused to allow the represented employee to consult a lawyer and thus refused co-representation outright.

[103] The complainant argued that the bargaining agent was wrong to want to move to the second level because according to her, it had to wait until she received all the documentation from her access-to-information request. That came under another principle of natural justice, the right to be heard.

[104] She questioned the advice about the Canadian Human Rights Commission and the third-level approach, as well as Ms. Germain's opinion that the grievance levels can be useful for gathering information from the employer and for helping determine if adjudication is worth pursuing.

[105] She criticized the notion of discrimination that the bargaining agent appears to have advocated. She stated that it is not about making a direct link but instead perceiving "[translation] the subtle scent of discrimination". Ms. Germain and Ms. Petrin should have accepted that standard.

[106] According to the complainant, Ms. Petrin is held to a higher standard of legal accuracy than the bargaining agent as a whole, given her training and bar certification. Accordingly, she erred in her advice about the Canadian Human Rights Commission and in her opinion that veganism is not a ground of discrimination in Canadian law. She also erred by stating that a grievance that involves discrimination must be filed under the collective agreement and so with the bargaining agent's support.

[107] The complainant made several comments about the representation that Ms. Germain could give to the Translation (TR) group at the Translation Bureau because she seemed to be the only one dealing with that group. The complainant also alluded to the respondent's lack of intervention in the translators' working conditions at Debates; notably, the number of words required during peak periods.

[108] All those comments are well beyond the scope of this complaint. I declined to hear evidence on the general issue of the Debates translators. The complaint before me

is about the respondent's representation of the complainant; it is not about other translators.

[109] The complainant believes that the respondent erred when it refused to support that veganism can be a ground of discrimination.

[110] The right to vegan meals is protected by freedom of conscience under s. 2(a) of the *Charter*. In that respect, the complainant cited *Maurice v. Canada (Attorney General)*, 2002 FCT 69, in which the Federal Court stated that refusing to provide vegetarian meals to an inmate violated his freedom of conscience.

[111] In addition, according to the complainant, Ms. Petrin conducted largely flawed research to conclude that veganism is not a creed as defined in the collective agreement's anti-discrimination article and therefore is not a prohibited ground of discrimination. Although the complainant conceded that "[translation] a decision has not yet been rendered on the matter", it would appear that by applying the basic principles, the conclusion would be that veganism is indeed a prohibited ground.

[112] She also criticized the respondent for not arguing discrimination based on a medical condition, although she had returned from sick leave and had just requested accommodation when she was informed that her employment was being terminated. According to her, the connection is clear.

[113] Finally, not only did the respondent err by not considering the discrimination allegations, but also, Ms. Petrin discriminated against the complainant by appearing not to take veganism seriously as a ground of discrimination.

2. Complaint 561-02-42433

[114] The complaint was made against Ms. Beaulieu who, according to the complainant, took on a representation role by agreeing to be a witness at the June 2019 meeting that Ms. Bard held with the complainant.

[115] The complainant submitted that Ms. Beaulieu participated in the employer's sham that led to the complainant's dismissal and that she used her shop steward role to draw favours from the employer, as a revisor and manager, without considering the complainant's rights.

[116] She emphasized Ms. Beaulieu's and Ms. Bard's very friendly relationship. She stated that Ms. Beaulieu apparently informed Ms. Germain that she "[translation] had some decision-making authority with respect to selecting restaurants". I note that I saw no such evidence. Yet, according to the complainant, her veganism bothered Ms. Beaulieu for that reason.

[117] The complainant submitted that only Ms. Beaulieu complained about her translations. Therefore, logically, she was behind the action plan and the ultimate rejection on probation.

[118] Ms. Beaulieu's intervention, when she stopped the complainant with her laptop in February 2020, clearly shows that she was on the employer's side and against the complainant.

[119] Finally, Ms. Germain's and Ms. Beaulieu's January 6, 2021, telephone call clearly demonstrated Ms. Beaulieu's bias against the complainant.

[120] The complainant requested several remedies. Because I do not allow the grievance, I see no need to elaborate.

B. For the respondent

[121] An unfair-representation complaint is made under s. 187 of the *Act*. For it to succeed, the complainant has to demonstrate that the respondent acted in a discriminatory or arbitrary manner or in bad faith in its representation of her. In this case, she did not discharge her burden of proof.

[122] The Board's case law is clear that disagreeing with the bargaining agent's strategy or reasoning is insufficient to establish that it failed its duty (see in particular *Gibbins v. Professional Institute of the Public Service of Canada*, 2015 PSLREB 36).

[123] The complainant accused the respondent of stating that it would be difficult to reverse the employer's decision because the rejection occurred during probation and because of, in the employer's opinion, an employment-related reason. That position was not taken to deny the complainant's rights but to consider the reality that it is difficult to challenge a rejection on probation.

[124] Ms. Germain did her best to help the complainant in her dispute, but there was a lack of cooperation. Ultimately, the complainant notified the respondent that she was

being represented by someone else, who took over the case. The respondent clearly stated that it would not accept co-representation. In addition, without more information, it believed that the grievance was unlikely to succeed. The sequence of events might have been different had Ms. Germain been able to proceed with the grievance levels; at the hearing, she clearly stated that she had been prepared to move forward but that the complainant had refused to proceed.

[125] The complainant has two complaints: one against Ms. Beaulieu, and the other against the respondent (specifically, Ms. Germain's and Ms. Petrin's actions).

[126] For the complaint against Ms. Beaulieu, it is important to understand that she has no role representing employees individually. As a shop steward, she links the workplace and the respondent; as a witness on the ground, she helps the respondent better understand work issues. However, she does not represent employees in their grievances and does not investigate work situations leading to grievances. That is the labour relations officer's role.

[127] Nothing in the evidence established that Ms. Beaulieu had a role in establishing the action plan or that she discriminated against the complainant due to her veganism.

[128] As a TR-03, Ms. Beaulieu revised the complainant's documents, as did others. She identified weaknesses, which was her job. She did not have a role in ordering meals or choosing restaurants. Simply put, nothing indicated that the complainant's veganism influenced the revision of her work.

[129] The complaint against the respondent and its agents, Ms. Germain and Ms. Petrin, is also unfounded. The complainant could not accuse the respondent of ending its representation as she chose an outside representative. Therefore, the separation was mutual.

[130] The case law shows that the duty of fair representation does not mean perfection. As long as the bargaining agent honestly investigates the employee's situation and carefully and seriously reviews the file, it fulfils its duty. It does not have to adopt the employee's position or strategy.

[131] In this case, Ms. Germain and Ms. Petrin seriously considered the complainant's situation. Based on precedents, they concluded that the grievance was unlikely to succeed. However, despite that conclusion, Ms. Germain was still prepared to defend

the grievance by arguing the arbitrary manner in which the rejection on probation was carried out and the excessive workload in the first months of the complainant's employment. She was never able to act because the complainant rejected her advice to proceed to the second-level hearing of the grievance process. She cannot be faulted for following the complainant's direction, until the latter said that someone other than Ms. Germain would be representing her.

[132] Ms. Germain always handled the case seriously. When she learned that the complainant might lose her job, she tried to negotiate with the employer. She contacted Mr. Desgagné, and she obtained a summary of the situation from the complainant.

[133] Early on, it was not a question of discrimination or retaliation. The complainant raised those issues only much later. She accused Ms. Germain of being pessimistic; for Ms. Germain, it was about managing expectations. Strictly speaking, a rejection on probation is not a dismissal, which would require just cause. For a rejection on probation, the employer's dissatisfaction is sufficient as long as it relates to the employee's work.

[134] According to the respondent, Ms. Germain's proposed approach for the grievance was reasonable. She suggested going through the levels to gather as much information as possible from the employer. That information could have been useful when deciding whether to pursue a referral to adjudication.

[135] Ms. Germain realized that the complainant was not cooperating; she consulted, she built a file, she suggested discrimination, but she did not share any information with Ms. Germain. Finally, she shared medical certificates that according to Ms. Germain, did not support a discrimination allegation. The complainant suggested that discrimination occurred because of her veganism.

[136] Ms. Petrin carried out research. She concluded that veganism cannot be considered a prohibited ground of discrimination. Ultimately, the complainant said that someone else would represent her.

[137] The respondent submitted that there was nothing arbitrary, discriminatory, or in bad faith in its approach or Ms. Germain's and Ms. Petrin's actions. They studied the

case seriously. Ms. Germain tried to negotiate with the employer and reviewed the information that the complainant gave her.

[138] A disagreement over the strategy of whether to proceed to the second level or a disagreement about veganism as a ground of discrimination is not sufficient to conclude that the respondent acted in a discriminatory or arbitrary manner or in bad faith in its representation of the complainant.

[139] The complainant argued that the respondent had to abide by the rules of procedural fairness and natural justice in her case. That is a misunderstanding of administrative law principles. The bargaining agent is a not an administrative decision maker to which those rules apply. In that respect, the respondent cited *Hogan v. C.B.R.T. & G.W.*, [1981] 3 Can. LRBR 389, specifically the following passage at paragraph 17:

> *Perhaps it is the verbal similarity between the "duty of fair representation" and "procedural fairness" that confuse [sic] parties and their counsel unfamiliar with labour relations… In constructing argument [sic] they seek to treat the union official and grievance procedure as if he and it were exercising a classical quasi-judicial administrative function. This is clearly not the case. Our concern is not with rules of natural justice and the procedure followed but whether the bargaining agent, before its decision, gave the matter the attention it deserved and its resources permitted.*

[140] The respondent concluded that it fulfilled its obligations to the complainant. Ms. Germain seriously considered her allegations and sought information from her, as well as from the employer and Mr. Desgagné. The complainant's lack of cooperation and reluctance to proceed stopped Ms. Germain from going further.

[141] The analysis that the grievance would be difficult to defend as it involved a rejection on probation for performance reasons was not arbitrary or motivated by bad faith. On the contrary, the analysis was realistic, to the best of Ms. Germain's knowledge.

[142] Finally, the respondent's withdrawal was due partially to the grievance analysis but also to the complainant's choice to be represented by someone else outside the respondent. Based on those facts, it cannot be concluded that the duty of fair representation was violated.

IV. Analysis

[143] Both complaints were made under s. 187 of the *Act*, which bears quoting again, to inform the analysis:

> ***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.*

[144] The bargaining agent's duty is not to bend to the will of the employee that it represents or to adopt the strategy that the employee advocates. The case law is consistent in that the bargaining agent must demonstrate that it reviewed the case carefully and seriously. As the adjudicator wrote as follows in *Halfacree v. Public Service Alliance of Canada*, 2009 PSLRB 28 at para. 23:

> *[23] In* Canadian Merchant Service Guild v. Gagnon et al.*[1984] 1 S.C.R. 509, the Supreme Court of Canada established that it is sufficient for a bargaining agent to demonstrate that it has looked at the circumstances of the grievance, considered its merits and made a reasoned decision whether to pursue the case.…*

[145] I see nothing in the respondent's actions that violated those directives. Ms. Germain and Ms. Petrin considered the circumstances of the rejection on probation, examined the merits of the grievance, and made the reasoned decision to stop representing the grievance, given the lack of cooperation and the representation by an outside party, and given the legal difficulty of contesting a rejection on probation.

A. Complaint 561-02-42426

1. The discriminatory nature of the representation

[146] In this decision, the complainant wanted me to clearly establish that veganism is a ground of discrimination under the law or at least a choice protected by s. 2 of the *Charter* (freedom of conscience).

[147] I am not prepared to rule on veganism as a ground protected by the *Charter*, the *Canadian Human Rights Act*, or the collective agreement, as such a conclusion is not necessary for this decision.

[148] The respondent, through Ms. Germain and Ms. Petrin, informed the complainant that it was not prepared to recognize veganism as a ground of discrimination. Ms. Petrin concluded that under the current legislation in Canada, veganism is not recognized as a ground of discrimination.

[149] I note that the complainant cited the Federal Court's decision in *Maurice*. In it, the Court found that an inmate's vegetarianism was protected by freedom of conscience and that the institutional authorities' refusal to provide him with vegetarian meals violated s. 2 of the *Charter*. The circumstances are too different to apply that decision to this case. Suffice it to say that the complainant's diet was not dependent on the employer, while an inmate's diet is entirely dependent on correctional authorities.

[150] From the evidence presented, I understood that the respondent did not want to pursue the veganism case for two reasons. First, Ms. Petrin's research did not yield any case law to support the position that veganism is a prohibited ground of discrimination. Second, there was no evidence linking the complainant's veganism to her rejection on probation.

[151] Once again, I am not ruling on the employer's decision to terminate the complainant's employment. The debate about the grievance remains. There may be evidence that I do not have before me that shows that the employer was biased against the complainant because of her veganism. If such evidence exists, I am satisfied that it was not presented to the respondent. Therefore, it cannot be accused of failing to act accordingly.

[152] The complainant also criticized the respondent for not concluding that discrimination occurred when she was informed that her employment was being terminated on her return from sick leave. At first glance, indeed, those questions are valid. And Ms. Germain asked questions to understand the connection between the sick leave and the rejection on probation. She found out that there was no such connection. She was satisfied with the explanation from the employer's labour relations officer, Catherine Rousseau, who, with emails in support, indicated to her that the decision was made in February, before the sick leave.

[153] Once again, I am not ruling on the employer's actions. My analysis is limited to the actions of the respondent's representatives, Ms. Germain and Ms. Petrin. I do not find any discriminatory behaviour.

2. Arbitrariness or bad faith in the representation

[154] The complainant argued that Ms. Germain should be viewed as somewhat overly aligned with the employer, particularly because of her excellent relationship with Ms. Rousseau, which she confirmed at the hearing.

[155] I fail to see how Ms. Germain can be considered at fault because she maintained a good relationship with her employer counterpart. In its preamble, the *Federal Public Sector Labour Relations Act* states that the objective is not to maintain adversarial relationships but to establish harmonious labour relations.

[156] Ms. Germain did her job by trying to gather more information about the decision to reject the complainant on probation. She took steps to try to convince the employer to assign the complainant to a different Translation Bureau position. She obtained information that convinced her that the employer had performance-related reasons for ending the complainant's employment.

[157] Although it is hard to contest a rejection on probation, Ms. German was still prepared to represent the complainant and to contest it because the decision appeared arbitrary and because of the complainant's difficult situation early in the probation during the extremely busy period in May and June 2019, largely based on Mr. Desgagné's comments. She repeated that position at the hearing. She never had the chance to do it. The complainant continued to put off the second-level hearing, against her advice, and in the end, Mr. Arsalane took over the representation.

[158] Ms. Germain's representation involved nothing arbitrary or in bad faith. She took the case seriously, she listened to the complainant and put off the second-level hearing, and she repeatedly asked for evidence to support the grievance. Despite alluding to discrimination, the complainant presented no evidence that veganism was a factor in her rejection on probation. She returned from sick leave, and the employer granted the requested telework accommodation. For the reasons stated earlier, Ms. Germain found no discrimination linked to a medical condition.

[159] The case law is clear. It is not up to me to decide if the respondent chose the best strategy or to decide if the discrimination analysis was absolutely correct. Rather, I must decide if the respondent's representatives carried out their jobs seriously and conscientiously. I conclude in the affirmative.

[160] An unfair-representation complaint cannot be founded on a disagreement about strategy. Ms. Germain had clear and logical reasons to want to proceed to the second level or even the third. In that respect, I would quote *Gibbins*, at para. 104, as follows:

> *104 But, as noted in* Bahniuk, *the union is not obligated to follow the direction of its members in determining the proper course of its representation as long as it is not acting in bad faith or in an arbitrary or discriminatory manner. Furthermore, I believe that the union is not obligated to represent an employee who will not cooperate with it or whose lack of trust is so corrosive that the relationship is not functional. In those circumstances, its representation would not be productive and therefore would not be in the best interests of the membership as a whole.*

[161] The complainant strongly insisted that the respondent had a duty to comply with procedural fairness and natural justice. I agree with the reasoning in *Hogan* that those traits of administrative justice are not obligations created by the duty of fair representation.

[162] The complainant cited three decisions on that point: *Pronovost*, *Veillette*, and *Bremsak*. In *Pronovost*, the Board stated that the rule of procedural fairness applies when someone is deprived of a right. In that decision, Ms. Pronovost was not deprived of a right; therefore, the rule was not recognized. In this case, the respondent's actions did not deprive the complainant of a right. She may grieve her rejection on probation without the bargaining agent's support.

[163] *Veillette* and *Bremsak* involved discipline within the bargaining agent. The complainants were denied the opportunity to fully participate in bargaining agent activities. Therefore, a certain obligation was created, but it was respected.

[164] The issue in this case is not at a level that involves a duty of procedural fairness or natural justice for the bargaining agent. It must not act in an arbitrary manner, and to that extent, of course it must listen to the employee that it represents. However, this does not create the duties that the complainant would like to impose, which are to

explain to her what she must demonstrate to win her case (it is up to the bargaining agent representing her to make that demonstration).

[165] The rules of procedural fairness and natural justice apply to quasi-judicial tribunals such as the Board. Once the grievance had moved through all the levels of the process, it could have been referred to adjudication. At that moment, the required documents could have been sought under a production order (subject to relevance). Also at that moment, the complainant would have been entitled to a perfectly impartial hearing at which an independent third party, not the employer, would decide. I cannot fault the respondent's reasoning. In the grievance levels, Ms. Germain saw an opportunity to move the grievance along. The complainant saw things another way; she wanted to have in hand all the evidence possible to support her grievance, presumably because she hoped to convince the employer. Once again, such a difference of opinion is insufficient to conclude that the complaint is founded.

[166] I conclude that the respondent did not act in an arbitrary or a discriminatory manner or in bad faith in its representation of the complainant.

B. Complaint 561-02-42433

[167] This complaint specifically pertains to Ms. Beaulieu, who allegedly violated s.187 of the *Act* while representing the complainant. For the reasons that follow, I cannot validate that allegation.

[168] First, as a shop steward, Ms. Beaulieu did not have a role in representing the complainant. That role is reserved for labour relations officers, such as Ms. Germain.

[169] The complainant tried to seize on Ms. Beaulieu's participation in a meeting with the manager. Ms. Beaulieu clearly explained her role. She had been there as a witness, to protect both the manager and the complainant. According to both testimonies, Ms. Beaulieu did not intervene. She simply attended the meeting.

[170] Next, I could not conclude that Ms. Beaulieu was responsible for the action plan, which ultimately failed. The exchanges preceding the plan's implementation took place between Mr. Laflamme and Ms. Leduc, who was another revisor. Ms. Beaulieu's and Ms. Bard's friendship also appears to be a red herring. Mr. Laflamme, not Ms. Bard, imposed the action plan.

[171] Finally, although Ms. Beaulieu was critical of the complainant's work in May and June 2019, she was not the only one. Mr. Desgagné also notified Ms. Germain of weaknesses in the complainant's work. Apparently, he thought that the action plan was a good idea. According to him, it provided the coaching that the complainant needed.

[172] In cross-examining Ms. Beaulieu, an attempt was made to draw out her hostility toward the complainant's veganism. I saw indifference and not hostility. Veganism is very important to the complainant; it was for the employer as well, in that it wanted everyone to enjoy the meals offered during peak periods, but it was not the only dietary restriction that it had to consider. I noted in Ms. Beaulieu's statement that according to her, veganism is one dietary choice among others. From there, it is going too far to state that Ms. Beaulieu would have contributed to the ultimate rejection on probation for discriminatory reasons.

[173] Therefore, the complaint is dismissed for two reasons. I do not consider that Ms. Beaulieu was in any way involved in the rejection on probation, and I do not find that her shop steward role conflicted with her revisor role. She was the bargaining agent's presence in the workplace to convey employees' views on the work situation; she had no individual representation role and therefore could not fail in that role.

[174] I must comment on Ms. Germain's notes of a conversation that she had with Ms. Beaulieu about the complainant in January 2021. The tone is certainly negative. However, given the sequence of events, I do not consider that the conversation had any bearing either on the respondent's decision to stop representing her, as someone else had taken that over and the respondent's reasoning was already established, or on the role that Ms. Beaulieu might have played in the action plan and the rejection, as many other parties were involved. Therefore, I conclude that the complaint against Ms. Beaulieu is unfounded.

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

(The Order appears on the next page)

V. Order

[176] The complaints are dismissed.

November 7, 2022.

FPSLREB Translation

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