

Date: 20230327

File: 561-02-39259

Citation: 2023 FPSLREB 28

*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

PAUL ABI-MANSOUR

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Abi-Mansour 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: Nancy Rosenberg, a pane of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Daria Strachan, counsel

Decided on the basis of written submissions
filed October 5 and November 8, 2018, January 7, 2019 and November 30, 2022

REASONS FOR DECISION

I. Decision re motion for dismissal

[1] Paul Abi-Mansour (“the complainant”) is employed by the Department of Fisheries and Oceans Canada (the “employer”). The Public Service Alliance of Canada (“the PSAC” or “the union”) is the bargaining agent for all employees in the Program and Administrative Services Group. It assists and provides representation to its components, including the Union of Canadian Transportation Employees. Both entities will be referred to as “the union” in this decision.

[2] On June 15, 2015, the complainant asked the employer for four days of leave without pay (“LWOP”) under article 52.01(b) of the collective agreement:

52.01 At its discretion, the Employer may grant:

...

b. Leave with or without pay for purposes other than those specified in this Agreement.

52.01 L'Employeur peut, à sa discrétion, accorder :

[...]

b. un congé payé ou non payé à des fins autres que celles indiquées dans la présente convention.

[3] The complainant advised that he wished to take Friday, June 19, 2015 to Wednesday, June 24, 2015 off work to write a memorandum of fact and law for what he described as an appeal of a staffing decision. The employer denied his request on the basis that he had enough vacation leave to cover the four days. It approved four days of vacation leave which the complainant took.

[4] The union grieved the denial of LWOP on the complainant’s behalf through the three levels of the grievance process, after which it refused to refer his grievance to adjudication. On October 5, 2018, the complainant filed this complaint under s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) (“the Act”). He alleged that by not referring his grievance to adjudication the union had breached its duty of fair representation as set out in s. 187 of the *Act*.

[5] On November 8, 2018, the union asked the Board to dismiss the complaint without a hearing on the basis that it did not present any factual foundation upon which a violation of the duty could be substantiated. On January 7, 2019, the complainant objected to the union’s request for summary dismissal and on November

30, 2022, at the invitation of the Board, he filed an additional submission in support of his objection.

[6] To determine whether this complaint should be summarily dismissed, I must determine whether there is an arguable case that the union breached its duty. To do so, I must take the complainant's allegations to be true, and without considering any defence that the union might raise, determine whether those allegations could substantiate an alleged violation of the duty.

[7] I find that with respect to the following factually supported allegations, the complainant has made out an arguable case that the union breached its duty of fair representation. The complainant alleges that:

1. His second-level union representative pressured him to withdraw the grievance, did not let him talk at the second level hearing, made very brief arguments, and signalled to the decision maker that the union was not interested in the grievance.
2. His third-level union representative pressured him to withdraw the grievance and said, as soon as he received it, that the PSAC would not refer it to adjudication. The grievor alleges that the union had decided against referral months earlier and that its non-referral analysis was an exercise to justify the decision and not a serious look into the merits.
3. His third-level union representative prepared no factual or legal analysis. He raised the discrimination allegation for the first time at the third level by asking the complainant, in the hearing, if he felt that he had been discriminated against. No other evidence or argument was put forward to support the discrimination allegation.
4. The union decided not to proceed with the complainant's grievance after he had filed an unrelated s. 187 complaint against it.
5. Goretti Fukamusenge, then Acting Co-ordinator of PSAC's Representation and Legal Services Branch, advanced frivolous allegations that the complainant had harassed her staff and, therefore, her analysis was tainted by bad faith.

[8] To be clear, these findings simply mean that these allegations, in certain circumstances, could establish a violation of the duty of fair representation. Therefore, evidence is required to determine if they do establish such a violation. Accordingly, this matter will be scheduled for a two-day hearing to hear evidence only with respect to those allegations.

[9] The complainant has not made out an arguable case with respect to any other factual allegations, legal arguments or proposed constitutional challenges raised in his submissions, all of which are denied with reasons to follow in the final decision.

[10] The complainant requested the production of certain documents “the November 2017 e-mails.” If the complainant requires these documents, he may advise the Board more specifically what they are and how they relate to this matter and the Board will decide if they must be produced.

[11] Ms. Fukamusenge, who was named in the complainant’s allegations, has been appointed as a full-time member of the Board effective March 13, 2023. There has been and will be no communication between this panel of the Board and Ms. Fukamusenge about this matter.

[12] The Board makes the following order:

(The Order appears on the next page)

II. Order

[13] The union's motion for summary dismissal is partially upheld with reasons to follow in the final decision.

[14] The Board will schedule a two-day video hearing to hear evidence with respect to the allegations set out in paragraph 7 of this decision.

(March 27, 2023).

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**