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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

CARLINE FIDÈLE

Complainant

and

NATIONAL POLICE FEDERATION

Respondent

Indexed as

Fidèle v. National Police Federation

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*

Before: Guy Giguère, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Alexander H. Duggan, counsel

For the Respondent: Denise Deschênes and Christopher Rootham, counsel

Decided on the basis of written submissions,
filed February 10 and March 1 and 8, 2023.
[FPSLREB Translation]

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Introduction

[1] On February 15, 2021, Carline Fidèle (“the complainant”) made an unfair-labour-practice complaint against the National Police Federation (“the respondent” or NPF) with the Federal Public Sector Labour Relations and Employment Board (“the Board”). She submitted that the NPF refused to provide her with legal assistance for her grievance, in contravention of ss. 190(1)(g) and 185 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[2] On October 25, 2022, the Board issued an order seeking clarification of the basis for the complaint, at the respondent’s request. The complainant was to specify the remedy being sought and to identify the grievance referred to in her complaint, to determine whether it was a different grievance from the one of February 18, 2020.

[3] On November 18, 2022, the complainant clarified that the grievance dated February 18, 2020 (“the grievance”), is the only grievance relevant to her complaint. The remedies sought are 24 months of total compensation, the reimbursement of all medical expenses not covered by the Royal Canadian Mounted Police (RCMP or “the employer”), and \$25 000 in moral damages and the reimbursement of legal fees.

[4] On December 19, 2022, the respondent made a motion for the summary dismissal of the complaint so that it would be dealt with in a preliminary manner, without a hearing. It submitted that the Board does not have jurisdiction to hear the complaint because it is about a grievance filed under the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10; “the *RCMP Act*”). It submitted that the duty of fair representation does not apply to such grievances.

[5] This decision deals with the motion for the complaint’s summary dismissal. Assuming that the facts that the complainant presented are true, then next is determining whether her complaint makes an arguable case. Since the grievance was not filed under the *Act* but under the *RCMP Act*, it follows that the duty of fair representation does not apply to it. Therefore, for the following reasons, I find that the complaint does not make an arguable case.

II. Background

[6] In 2001, the complainant became a member of the RCMP. Her career then progressed as she was assigned to different positions and postings. Like all RCMP regular members (“the members”), every three years, she must participate in a four-day mandatory training course on shooting, wearing gas masks, incident management, takedowns, handcuffing, and the “[translation] carotid hold”.

[7] During the week of November 16, 2015, the complainant was enrolled in the training course. On November 19, 2015, she participated in practising the “carotid hold”. Her partner’s physique was more imposing than was hers. In the last manoeuvre, her partner put his right arm around her neck and pushed her lower back abruptly to put her on the ground, but he lost his balance. The movement caused her to suffer a crack at the cervical level and then intense neck pain.

[8] The complainant immediately notified the instructor and her immediate supervisor of the accident. A few days later, she was diagnosed with a cervical sprain. She then went on to suffer chronic pain, insomnia, and other health problems. Numerous medical treatments took place. But her condition continued to deteriorate.

[9] On February 18, 2020, the complainant filed a grievance against her employer in which she alleged that it denied her medical leave or the recommended accommodations even though she had complied with the sick-leave requirements.

[10] On December 1, 2020, the complainant requested the assistance of Corporal François Gagnon, her union representative, after she received the respondent’s arguments about her grievance. Within a few days, she asked him for a legal advisor’s help or help obtaining legal advice.

[11] On December 4, 2020, her union representative told her that he was running out of time and that he would send her request to Stéphane Laframboise, NPF Central Region Director. On December 9, 2020, her union representative informed her that the NPF would not be involved with her grievance. He explained to her that it was a medical issue that the NPF could not help with.

[12] On December 9, 2020, the complainant contacted Mr. Laframboise, who told her that NPF members could not obtain the assistance of counsel for any health issue

because they are not physicians. However, the NPF could help her if the employer intended to dismiss her.

III. Analysis

[13] In the analysis of the request for the complaint's summary dismissal, the facts that the complainant stated are presumed to be true. This is not a determination of the complaint's merits. The issue is to determine whether there is an arguable case that the respondent breached its duty of fair representation under s. 187 of the *Act*. If the answer is positive, the complaint must be heard on the merits. If the answer is negative, the complaint must be summarily dismissed.

[14] The complainant did not allege that her complaint arose from a violation of the *Act* by the employer; it is only about the respondent's duty of representation in the handling of her grievance.

[15] The respondent submitted that the grievance was filed under the *RCMP Act* and that therefore, such grievances do not trigger the duty of fair representation. Furthermore, grievances filed under the *RCMP Act* are not within the scope of the *Act* and are not the Board's responsibility. Only grievances filed under a collective agreement are subject to the *Act*, but the relevant collective agreement came into force six months after the complaint was made.

[16] Indeed, it is a well-established principle that the duty of fair representation under s. 187 of the *Act* applies only to matters or disputes covered by the *Act* or an applicable collective agreement (see *Elliott v. Canadian Merchant Service Guild*, 2008 PSLRB 3; *Millar v. Public Service Alliance of Canada*, 2021 FPSLRB 68; *Lessard-Gauvin v. Public Service Alliance of Canada*, 2022 FPSLRB 83; and *Abi-Mansour v. Public Service Alliance of Canada*, 2022 FPSLRB 48).

[17] As set out at ss. 31(1) and (1.01) of the *RCMP Act*, members may file two types of grievances. The first type may be filed only when an allegation is made of a violation of a collective agreement or an arbitral award; grievances of this type are the Board's responsibility. A complaint about a breach of the duty of fair representation may be made with the Board only for the first type of grievance (see *Frémy v. Royal Canadian Mounted Police*, 2021 FPSLRB 47).

[18] Members who allege that they suffered prejudice from the management of the RCMP's affairs may file the second type of grievance. Thus, matters relating to conditions of employment may be the subject of the second type. Members can file them independently and without having to secure union approval. However, the Board does not have jurisdiction over this type and cannot hear a member's complaint about one.

[19] The complainant's grievance is about the employer's refusal to grant her medical leave and an accommodation. Clearly, it is of the second type of grievance under s. 31(1) of the *RCMP Act*. It is not a grievance about the interpretation or application of a collective agreement or an arbitral award. It cannot be otherwise, because the complaint was made on February 15, 2021, well before the collective agreement came into effect on August 6, 2021.

[20] The complainant submitted that the Board still has jurisdiction to hear the complaint. According to her, the respondent was estopped from submitting the summary dismissal motion at the stage it did because the complaint's hearing is scheduled to take place soon. In her opinion, a face-to-face hearing is necessary because the respondent did not help her despite the serious nature of her injuries and the consequences for her career.

[21] The respondent replied that a party cannot consent to the Board's jurisdiction when the Board does not have jurisdiction to hear a complaint under the *Act* (see *Green v. Deputy Head (Department of Indian Affairs and Northern Development)*, 2017 PSLREB 17). It added that it took several steps to help the complainant with her grievance and that it helped her with other workplace issues, such as accommodation requests and medical retirement.

[22] The *Act* created the board and defines its jurisdiction. At ss. 238.24 and 238.25(1), the *Act* specifies that RCMP members' right to file a grievance is limited to questions about the interpretation or application of a collective agreement or an arbitral award.

[23] Neither the Board nor the parties may confer jurisdiction on the Board to hear grievances filed under the *RCMP Act* when the Board does not legally have it. In addition, estoppel cannot be used to assign jurisdiction that the Board does not have (see *Elliott and Wray v. Treasury Board (Department of Transport)*, 2012 PSLRB 64).

[24] Recourse to other courts may be available when a union organization does not properly represent a member on a matter not covered by the *Act* or a collective agreement, but that recourse does not lie with the Board. Thus, the respondent stated that the complainant could have filed an appeal under the NPF's internal appeal process.

[25] For those reasons, I find that the complainant's arguments did not demonstrate a reasonable cause of action. When she filed her grievance, she did so not under the *Act* but under the *RCMP Act*. Consequently, the complaint is not under the Board's jurisdiction, and the respondent did not fail its duty of fair representation set out in s. 187 of the *Act*.

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

(The Order appears on the next page)

IV. Order

[27] The complaint is dismissed.

May 5, 2023.

FPSLREB Translation

**Guy Giguère,
a panel of the Federal Public Sector
Labour Relations and Employment Board**