**Date:** 20230529

**File:** 561-02-46577

**Citation: 2023 FPSLREB 54**

*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

**VICTOR WALCOTT**

Complainant

and

**PUBLIC SERVICE ALLIANCE OF CANADA**

Respondent

Indexed as
*Walcott 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:** Himself

**For the Respondent:** Sandra Gaballa, Public Service Alliance of Canada

Decided on the basis of written submissions, filed February 2, 15, 17, and 20, 2023.

**REASONS FOR DECISION**

## I. Complaint before the Board

[1] On January 31, 2023, Victor Walcott ("the complainant") made a complaint to the Federal Public Sector Labour Relations and Employment Board ("the Board") against his former bargaining agent, the Public Service Alliance of Canada ("the respondent"). He submits that the respondent contravened its duty of fair representation, mandated by s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which reads as follows:

> ***187*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*
>
> ***187*** *Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.*

[2] The Board has existed under different names and legislation since 1967. From 1967 to 2005, its name was the Public Service Staff Relations Board (PSSRB), and its enabling statute was the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35). In 2005, it became the Public Service Labour Relations Board, then in 2014 the Public Service Labour Relations and Employment Board, and finally, in 2017, it acquired its present name.

[3] I provide that historical evolution because the complaint is related to events that occurred in 1997 after the complainant was terminated, in 1993, from his public service employment.

[4] The respondent asks the Board to summarily dismiss the complaint, mainly by reason of mootness.

[5] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; "*FPSLREBA*"), allows me to decide a matter without holding an oral hearing. The complainant replied to the respondent's motion to dismiss the complaint summarily. I believe that I have sufficient information to decide the matter. On a motion to dismiss a complaint summarily, the issue is whether, taking the complainant's assertions as true, there is an arguable case that warrants further

evidence and further submissions or whether the case should be dismissed because there is no arguable case. For the reasons that follow, I conclude that there is no arguable case and that the complaint should be dismissed.

## II. Context

[6] The complainant worked at what was then called Employment and Immigration Canada and was dismissed, effective October 30, 1993. He grieved his termination. The grievance was referred to adjudication. The PSSRB's deputy chairperson, sitting as an adjudicator, heard the grievance over 17 days in the spring and summer of 1997 and issued a decision on October 2, 1997 (*Walcott v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-25590 (19971002), [1997] C.P.S.S.R.B. No. 107 (QL)).

[7] The respondent declined to support the complainant's application for judicial review, and then he missed the application deadline. He filed an application for an extension of time with the Federal Court, which rejected it (*Walcott v. Canada (Employment and Immigration)*, 1998 CanLII 7355 (FC)). Although the Court recognized that the complainant had sufficiently explained the delay, it rejected the application because according to it, the complaint had no reasonable chance of success in an arguable case. This decision was upheld at the Federal Court of Appeal (*Walcott v. Canada*, 2000 CanLII 15103 (FCA)).

[8] The complainant made a complaint in 2000 against the respondent, which was dismissed (*Walcott v. Turmel*, 2001 PSSRB 86) because it was made unreasonably late, some three years after the events that gave rise to it. He claimed to have learned only some time before of the exchanges between the respondent and the law firm that represented him at the hearing. The PSSRB found that in fact he knew at the time of the hearing all the facts that he was complaining about — that the respondent had chosen to retain the services of a junior lawyer to defend him as the senior lawyer's fees were too expensive. The application for judicial review was dismissed (*Walcott v. Canada (Attorney General)*, 2003 FCA 113).

## III. Summary of the arguments

[9] As stated at the outset, the complainant is reviving his complaint against the respondent some 20 years later, claiming newfound evidence as a reason to reopen the

case. I will present the complaint, but first, I will address briefly a request made under s. 43 of the *Act*.

**A. Request made under s. 43 of the *Act***

[10] Section 43(1) of the *Act* reads as follows (s. 43(2) is not applicable in this case):

> ***43 (1)*** *Subject to subsection (2), the Board may review, rescind or amend any of its orders or decisions, or may re-hear any application before making an order in respect of the application.*
>
> ***43 (1)*** *La Commission peut réexaminer, annuler ou modifier ses décisions ou ordonnances ou réentendre toute demande avant de rendre une ordonnance à son sujet.*

[11] The jurisprudence of the Board and its predecessors establishes that certain conditions must be met for the Board to amend its orders and decisions. As stated in *Chaudhry v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 39 (application for judicial review dismissed, *Chaudhry v. Canada (Attorney General)*, 2009 FCA 376) at para. 29, a reconsideration must satisfy these factors:

> …
>
> - *not be a relitigation of the merits of the case;*
> - *be based on a material change in circumstances;*
> - *consider only new evidence or arguments that could not reasonably have been presented at the original hearing;*
> - *ensure that the new evidence or argument have a material and determining effect on the outcome of the complaint;*
> - *ensure that there is a compelling reason for reconsideration; and*
> - *be used "…judiciously, infrequently and carefully…" ….*

[12] The reconsideration the complainant is asking for is two-fold. First, he seeks a modification of the 1998 Federal Court decision (*Walcott v. Canada (Employment and Immigration)*). Second, he states that the sentence that appears in the *Walcott v. Turmel* on the second page under "Facts" and that reads, "Mr. Goulart was the lawyer who had represented Mr. Walcott during the criminal proceedings", is incorrect. He asks that it be corrected. The reasoning appears to be that one factual error might in fact signal other factual errors.

[13] The Board has no authority over Federal Court procedures and processes and therefore cannot require any change to a Federal Court decision.

[14] As for the second request, I cannot help but note that Mr. Walcott has waited some 20 years to have the statement corrected. More importantly, it is of no consequence to the decision ultimately rendered by the PSSRB. Mr. Walcott says that Mr. Goulart, the senior lawyer who started representing him before the PSSRB and then was replaced by a junior lawyer, helped him with other matters. Perhaps this was understood to mean the criminal proceedings Mr. Walcott was subject to at the time of his termination. Whether or not Mr. Goulart acted for Mr. Walcott in criminal proceedings had strictly no impact on the PSSRB decision.

[15] Mr. Walcott disputes the adjudicator's findings in the 1997 decision, but that is not the same as identifying factual errors. The adjudicator chose to believe some evidence over other evidence and explained his reasoning. The Board cannot intervene in the adjudicator's appreciation of the evidence.

[16] Consequently, the request under s. 43 is dismissed.

**B. Complaint**

[17] The complaint appears to raise a novel issue. The complainant submits that when he was dismissed, another employee was also involved and was terminated on the same grounds. However, the other employee's termination was changed into a resignation, and he received an amount in settlement. The complainant states that he only recently heard about it. He describes the circumstances of learning about it in the following manner:

> …
>
> *… I continued my efforts for many years to bring truth and light to this heavy cloud of injustice that descended on me and a coverup, I strongly suspected heinous bedeviled arrangement had taken place and investigated continually. My suspicions were not enough for any conclusions and discussed a disturbing message from a friend in ending of November 2022 with a lawyer. I was told in that message that* [other employee's name] *was celebrating his windfall of lucrative settlement from the Canada Employment Department and has been for years. I was advised to get statement or affidavit. I have not spoken to him about this latest information.* [The other employee] *and others had fabricated story and evidence at the hearing and PSAC was made aware of this.*
>
> …
>
> [*Sic* throughout]

[18] The complainant got in touch with the respondent in December 2022 to discuss the matter. It answered that it had no further information beyond the decisions rendered. Files on the matter had since been destroyed and in any event, whatever settlement the other employee might have obtained was confidential.

[19] The respondent told the complainant that the decisions made on his case were final (both the grievance and the unfair-representation complaint). It stated there was no way to reopen the matter.

### C. The respondent's response and motion to dismiss

[20] The respondent argues that s. 21 of the *FPSLREBA* allows the Board to "… dismiss summarily any matter that in its opinion is trivial, frivolous, vexatious or was made in bad faith." It submits that the threshold is met in this case.

[21] Following s. 187 of the *Act*, the duty of fair representation is owed to members of the bargaining unit. The complainant has not been a member for some 30 years. Moreover, he is attempting to relitigate matters that have already been finally decided.

[22] The gist of his complaint is that he does not accept the decision on his termination grievance and that he blames the respondent's faulty representation at the time. The PSSRB and the federal courts addressed those issues. They cannot be relitigated.

[23] The respondent asks that the Board summarily dismiss the complaint.

### D. The complainant's reply

[24] In his reply, the complainant goes back to the defective representation he received from the junior lawyer. He disagreed with the strategy that the junior lawyer adopted. He disagrees with many statements with respect to the procedures that led to the different decisions in his case. He adds that he was suspended from the respondent in 1992, which might explain its bad faith behaviour.

## IV. Analysis

[25] The complainant has never accepted the fact that his termination grievance was denied. He now raises the fact that another employee, in a similar situation, received a different treatment.

[26] However, this fact was known when the adjudicator heard the termination grievance in 1997. A sentence at page 23 (PSSRB decision *Walcott v. Treasury Board (Employment and Immigration Canada)*) indicates that the other employee, who testified at the hearing, was dismissed in 1993 from his employment with Employment and Immigration Canada. The adjudicator then adds that that employee resigned from the public service in January 1994. It is unclear whether the dismissal became a resignation, but it seems unlikely the other employee would have been rehired only to resign shortly after. In any event, it does show a different conclusion to the termination of employment.

[27] The complainant might have inquired then about the different treatment. He did not. The complainant cannot rely now on information that was available to him 25 years ago.

[28] The alleged suspension in 1992 has no bearing on this matter. The respondent hired a lawyer in 1997 to defend the complainant at the hearing. The fact that he is dissatisfied with the lawyer and the outcome of the hearing is not the standard for determining whether the respondent met its duty of fair representation.

[29] The complainant is attempting to revive a matter that was settled long ago. He is raising points about what he claims was defective representation that were raised before the PSSRB and the federal courts. The Board cannot overturn final and binding decisions rendered by the PSSRB and the federal courts. Nothing in the complaint meets the arguable-case standard as there is nothing left to argue.

[30] Therefore, this case is summarily dismissed.

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

*(The Order appears on the next page)*

## V. Order

[32] The request under s. 43 of the *Act* is dismissed.

[33] The complaint is dismissed.

May 29, 2023.

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