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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

EMMANUELLE TREMBLAY

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as

Tremblay v. Canadian Association of Professional Employees

In the matter of a complaint 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: Herself

For the Respondent: Jean-Michel Corbeil, counsel

Decided on the basis of written submissions,
filed September 14, October 6, and November 2, 2021.
[FPSLREB Translation]

REASONS FOR DECISION**FPSLREB TRANSLATION**

Introduction

[1] On May 10, 2021, Emmanuelle Tremblay (“the complainant”) made an unfair-labour-practice complaint against the Canadian Association of Professional Employees (“the respondent” or CAPE) with the Federal Public Sector Labour Relations and Employment Board (“the Board”). She claims that the respondent adopted *By-Law 15 - Suspension due to Conflict of Interest Related to Litigation* (“By-Law 15”) for disciplinary reasons against her, thus contravening ss. 190(1)(g) and 188(c) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[2] The complainant alleges that the respondent adopted By-Law 15 after she was elected to its National Executive Committee (NEC), to prevent her from serving on it. According to her, it constituted a form of penalty applied in a discriminatory manner (see *Veillette v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 64).

[3] On September 14, 2021, a pre-hearing conference was chaired by Linda Gobeil, a Board member at that time. At that hearing, a timeline was decided for the parties to present their written submissions. On the same day, the complainant specified the corrective measure that she seeks, which is that the respondent issue a statement to its members reporting By-Law 15’s adoption and its application to the NEC.

[4] On October 6, 2021, the respondent presented its preliminary objections with respect to the Board’s jurisdiction to hear this complaint. It seeks the complaint’s summary dismissal. It indicates that By-Law 15 is not a disciplinary measure but an administrative bylaw about suspending NEC members who are in a conflict of interest related to litigation. The respondent also submits that the complaint was made outside the time limit set out in s. 190(3) of the *Act*.

[5] On November 2, 2021, the complainant submitted in rebuttal that she challenges By-Law 15’s adoption. The penalty damaged her reputation, thus causing her harm. She explains that the complaint was made on time because she had to exhaust all internal recourse before making it with the Board.

[6] My opinion is that the complaint was made out of time and that it must be dismissed for the reasons set out in the analysis section of this decision.

[7] Additionally, had the complaint been made within the 90 days, the motion to dismiss it would have been allowed. The Board must not interfere in employee organizations' internal affairs. It intervenes only in exceptional cases, including when a disciplinary measure or penalty was applied in a discriminatory manner as set out in s. 188(c) of the *Act* (see *Leon v. Canadian Association of Professional Employees*, 2021 FPSLREB 145).

[8] In labour law, a decision, bylaw, or policy can be characterized as discriminatory when it distinguishes between individuals or groups on grounds that are arbitrary, unreasonable, or illegal (see *Bremsak v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 103; *Daniel Joseph McCarthy*, [1978] 2 Can LRBR 105; and *Gilkinson v. Professional Institute of the Public Service of Canada*, 2018 FPSLREB 62).

[9] The complainant was the first person suspended, but that alone does not demonstrate that the decision to suspend her was arbitrary or unreasonable. As for the bylaw, it applies to all members, without distinction. It is not contrary to human-rights legislation. A member involved in litigation against their employee organization may be in a conflict of interest when the board of directors discusses the litigation. It can be considered reasonable and logical to adopt such a general administrative bylaw.

[10] My opinion is that By-Law 15 is not discriminatory in itself and that its application to the complainant was not discriminatory. Even had the complaint been made on time, it would have been dismissed; it does not make an arguable case.

Context

[11] In 2014, the complainant was elected as the CAPE's president for a term from January 1, 2015, to December 31, 2018. Her presidential term was marked by certain tumultuous incidents. In July 2018, she launched a civil suit before the Ontario Superior Court of Justice ("the civil suit") against CAPE and Nick Giannakoulis, then the CAPE's vice president for the Economics and Social Science Services (EC) group. The complainant did not run for president when her term ended, and her suit against CAPE is still active.

[12] In October 2020, the complainant was acclaimed as a director on the NEC representing the EC group for a term starting on January 1, 2021. On

November 27, 2020, the NEC had adopted By-Law 15, which is about suspending an officer who is in a conflict of interest due to litigation with CAPE.

[13] By-Law 15 establishes a presumption that a NEC member who has launched legal action and is actively involved in legal proceedings against CAPE is in a conflict of interest. In such cases, the member can be suspended from serving on the NEC but can appeal to an independent adjudicator chosen by both parties.

[14] On January 6, 2021, the complainant learned of the existence of By-Law 15 in a letter from CAPE's acting president, who invited her to present her arguments to avoid a suspension at the NEC meeting on January 29, 2021.

[15] At the January 29, 2021, meeting of the NEC, a majority of its members adopted a resolution suspending the complainant while her litigation remained active. She appealed the suspension before the adjudicator chosen by both parties, who was Roger Beaudry ("the adjudicator").

[16] On March 16, 2021, the adjudicator issued an interim decision that he did not have the authority to rule on the validity of By-Law 15 as the complainant had requested. He also rejected her request for the production of documents on By-Law 15's adoption.

[17] On April 3, 2021, the complainant received an email from Mr. Giannakoulis about an unfair-labour-practice complaint that he had reportedly made against CAPE. That email contained allegations, some of which concerned her. Among other things, it indicated that By-Law 15 was adopted as a disciplinary measure due to the civil suit and to counter her election to the NEC.

[18] The appeal hearing was held on April 6, 2021. Then, on May 10, 2021, the complainant made the unfair-labour-practice complaint against the respondent.

[19] On June 18, 2021, the adjudicator issued his decision, in which he allowed the complaint. He found that there was a conflict of interest due to the litigation against CAPE but that it did not justify suspending the complainant completely from her position. According to him, the conflict could have been managed by occasionally excluding her from NEC discussions about her litigation.

[20] The complainant then returned to her position on the NEC and attended the June 25, 2021, meeting.

Analysis

[21] Was the complaint made within the 90-day deadline?

[22] The complainant submits that her complaint was made on May 10, 2021, and that it was made within the deadline. Her opinion is that it would not have been appropriate to make her complaint when she learned about By-Law 15 in early January 2021. The bylaw was new and had never been applied. Internal recourse was available, and she indicated her intention to appeal when she was suspended from the NEC on January 29, 2021.

[23] According to the complainant, the time must count from March 16, 2021, as she exhausted all internal recourse on that date, which was when the adjudicator issued his interim decision stating that he did not have the authority to rule on the legitimacy of By-Law 15.

[24] The respondent notes that the complaint is related to the adoption of By-Law 15, not the complainant's suspension. She made her appeal under By-Law 15, but it was clear that the adjudicator could not render a decision to invalidate the bylaw.

[25] According to the respondent, the time for making the complaint must be counted from January 29, 2021. The complainant was informed of her suspension from the NEC on January 29, 2021; therefore, the complaint made with the Board on May 10, 2021, would be out of time under s. 190(2) of the *Act*. Thus, the complaint is out of time, as no reading of By-Law 15 allows the complainant to challenge its adoption by appealing.

[26] To be admissible, the unfair-labour-practice complaint must have been made within the time set out in the *Act*. The complainant alleges that the respondent committed an unfair labour practice under either s. 188(c), which is specific to employee organizations, or s. 190(1)(g) of the *Act*, which is more general.

[27] Section 190(2) of the *Act* sets out a period of 90 days from the date on which the complainant knew, or in the Board's opinion ought to have known, of the unfair

labour practice. It is well established that the time limit is mandatory and that the Board has no discretion to extend it. Only when there is ambiguity about the date on which the complainant became aware will the Board determine the date on which the complainant ought to have known of the actions or circumstances that gave rise to the unfair-labour-practice complaint (see *England v. Taylor*, 2011 PSLRB 129; and *Marcil v. Public Service Alliance of Canada*, 2022 FPSLREB 65).

[28] However, clause 15.7.3 of By-Law 15 states that the adjudicator's mandate is limited to determining whether the conflict of interest related to litigation is significant enough to justify a suspension while the litigation is active. Therefore, there is no internal recourse for challenging the adoption of By-Law 15. Clause 15.7.3 reads as follows: "The third party's mandate shall be limited to making a determination, based on the terms of this By-law, of whether the conflict of interest due to litigation is of such significance as to merit a suspension for the period of time that the litigation is active."

[29] The complainant followed the respondent's appeal process. However, on reading By-Law 15, on January 29, 2021, it was clear that she could not challenge its adoption or validity. On that date, on January 29, 2021, the 90-day period started for making her complaint.

[30] The adjudicator confirmed as much in his March 16, 2021, decision in which he found that he could not rule on the validity of By-Law 15 and its invocation. He rejected the complainant's argument and explained that his jurisdiction was limited under clause 15.7.3 of By-Law 15.

[31] I find that on January 29, 2021, the complainant knew or ought to have known of By-Law 15 and of the absence of internal recourse to challenge its validity. In addition, no principle of law or fairness would allow setting aside Parliament's intent that an unfair-labour-practice complaint must be made within 90 days of the date on which the complainant knew of the facts that gave rise to it (see *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, at para. 55; and *Delice-Charlemagne v. Public Service Alliance of Canada*, 2021 FPSLREB 143).

[32] For all those reasons, I find that the complainant made her complaint out of time.

[33] I find that the complaint does not make an arguable case that By-Law 15 and its application to the complainant are discriminatory.

Conclusion

[34] As the complainant made her complaint out of time, it is not admissible.

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

(The Order appears on the next page)

Order

[36] The complaint is dismissed.

July 5, 2023.

FPSLREB Translation

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