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*Federal Public Sector
Labour Relations and
Employment Board Act and
Parliamentary Employment and
Staff Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

DARSHAN SINGH

Complainant

and

SENATE OF CANADA

Respondent

Indexed as

Singh v. Senate of Canada

In the matter of a complaint made under section 13 of the *Parliamentary Employment and Staff Relations Act*

Before: Edith Bramwell, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Paul Champ and Bijon Roy, counsel

For the Respondent: George G. Vuicic and Nigel McKechnie, counsel

Decided on the basis of written submissions,
filed August 2, 14, and 15, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] Section 13(1)(c) of the *Parliamentary Employment and Staff Relations Act* (R.S.C., 1985, c. 33 (2nd Supp.); “the Act”) provides that the Federal Public Sector Labour Relations and Employment Board (“the Board”) shall examine and inquire into any complaint made to it that an employer, or any person acting on behalf of an employer, has failed to give effect to a decision of an adjudicator with respect to a grievance.

[2] The complainant, Darshan Singh, referred a grievance to adjudication under s. 63 of the Act. In the context of adjudicating that grievance, on July 5, 2023, the respondent, the Senate of Canada, was ordered to produce two emails to the complainant. Pursuant to s. 66.1 of the Act, an adjudicator has the power to compel, at any stage of a proceeding, any person to produce the documents and things that may be relevant (see also s. 20(f) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365)).

[3] When ordering that the emails be produced, this panel of the Board, acting as the adjudicator, rejected the respondent’s argument that the two emails in question are protected by parliamentary privilege. The respondent was ordered to provide them to the grievor by no later than July 14, 2023. In a subsequent ruling dated July 7, 2023, the respondent was granted an extension to produce the emails by no later than July 21, 2023.

[4] On July 19, 2023, the respondent indicated that it maintained that the emails are subject to parliamentary privilege and took the position that only the full Senate of Canada could authorize their production. It did not produce them to the grievor by July 21, 2023.

[5] On August 2, 2023, the complainant made this complaint, alleging that the respondent failed to give effect to the July 5, 2023, production order.

[6] For the reasons that follow, the complaint is allowed.

II. Summary of the submissions

[7] According to the complainant, there is no dispute that the respondent did not comply with the order dated July 5, 2023. The respondent’s correspondence of July 19,

2023, indicated that it did not accept and would not comply with the decisions and that instead, it would refer the matter for a decision by the full Senate. That is not the appropriate procedure to follow.

[8] Section 13 of the *Act* provides for the Board to determine whether any person has failed to give effect to a decision of an adjudicator and to make an order directing their compliance if that is the case. When that order is not complied with, s. 14 of the *Act* then requires the Board to cause a copy of its order and a report of its circumstances to be laid before each House of Parliament.

[9] In response, the respondent submits that the complainant's assertion that it did not accept and did not comply with production order is incorrect and therefore that the complaint is premature. Rather, it submits that the full Senate has not yet considered the order. The Chair of the Senate Standing Committee on Internal Economy, Budgets and Administration has undertaken to refer the matter to the full Senate for its consideration. However, as the full Senate is not currently in session, it has not yet had an opportunity to consider the order.

[10] The respondent adds that only the full Senate may authorize the disclosure of documents over which parliamentary privilege has been claimed. Until the full Senate considers the matter, the emails remain subject to its claim of parliamentary privilege. The full Senate may very well give effect to the production order, which would render this complaint moot. In the event that it does not, only then will the procedures provided in s. 14 of the *Act* be applicable. Therefore, the respondent requests an order that this complaint be held in abeyance pending the full Senate's decision on the production order.

III. Analysis

[11] The production order and subsequent extension directed the respondent to produce two emails by July 21, 2023. As of that date, the emails had not been produced. The production has still not been completed.

[12] The hearing of the complainant's termination grievance is set to take place from September 5 to 8, 2023, with continuation dates scheduled for November 14 to 17, 29, and 30, 2023. The next sitting day for the full Senate is September 19, 2023. According to the respondent, it expects that the full Senate will decide on the matter of the

production order before the grievance hearing dates in November, at which time the testimonies of its witnesses will be given; those witnesses have knowledge of the emails.

[13] The respondent's position effectively confirms that the emails in question will not be produced in time for the first part of the grievance hearing. There is also no certainty that the production will be completed at all, nor is there any certainty as to the date by which a decision by the full Senate with respect to producing the emails might be made. As the complainant pointed out in their submissions, by the time the full Senate has the opportunity to consider the production order, the November hearing dates will be rapidly approaching. It would then be difficult for the complaint process under the *Act* to be effectively engaged in the event that it is required.

[14] For those reasons, the Board finds that the complaint under s. 13 of the *Act* is not premature and that the respondent failed to give effect to the production order of July 5, 2023.

[15] Pursuant to s. 13(2) of the *Act*, where the Board determines that any person has failed to give effect to a decision, it may make an order directing that person to give effect to the decision within such specified period as the Board may consider appropriate. Given the time that has elapsed since the initial production order, and given the uncertainty with respect to whether or when the respondent will comply with it, the respondent shall have until September 5, 2023, to give effect to it.

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

(The Order appears on the next page)

IV. Order

[17] The complaint is allowed.

[18] The respondent shall give effect to the production order of July 5, 2023, and will produce and make available to the complainant, by no later than September 5, 2023, the following documents:

- the email from Senator David Wells to Senator Leo Housakos, dated November 30, 2015, at 11:17 a.m.; and
- the email from Senator George J. Furey to Senator Leo Housakos, dated November 30, 2015, at 1:55 p.m.

[19] The respondent shall notify the Board in writing that it has complied with this order.

August 30, 2023.

**Edith Bramwell,
a panel of the Federal Public Sector
Labour Relations and Employment Board**