Date: 20231116

File: 561-34-41537

Citation: 2023 FPSLREB 105

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

EMILY DAWN ADRIENNE ARCHER

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Archer 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: Pierre Marc Champagne, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Michael Fisher, counsel

Decided on the basis of written submissions, filed February 13, March 16, and June 1, 2020, and June 30 and July 7, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] At all relevant times, Emily Archer ("the complainant") was working for the Canada Revenue Agency ("the employer") and was a member of the Union of Taxation Employees, which is a component of the Public Service Alliance of Canada. In this decision, "the union" and "the respondent" refer to either or both entities.

[2] On February 13, 2020, the complainant made a complaint under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") alleging that the union and its representatives violated their duty of fair representation toward her. On March 16, 2020, the union denied the allegations and asked the Federal Public Sector Labour Relations and Employment Board ("the Board") to summarily dismiss the complaint as it does not make an arguable case for a few reasons, primarily on the basis that its substance deals with matters outside the relevant collective agreement or the *Act*. In this case, the relevant collective agreement between the employer and the respondent is for the Program Delivery and Administrative Services Group that expired on October 31, 2021 ("the collective agreement").

[3] In June 2020, the complainant filed a very detailed reply to the union's response. After being assigned to hear this complaint, I determined that I would first address the respondent's preliminary request, and therefore, the Board so advised the parties. In a case management conference on June 20, 2023, the Board requested additional submissions from the complainant limited to the question of the complaint's substance falling outside the collective agreement or the *Act*, as it was felt that that element was not addressed in her reply to the union's response. On June 30, 2023, the complainant filed a document that does not really address the question but rather reiterates most of her initial allegations while expanding on few others. The Board also gave the respondent the opportunity to file a brief rebuttal, which it did.

[4] Under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board has the ability to render a decision on any matter without holding an oral hearing. I have determined that there was sufficient information from the documents in the file and all the parties' submissions to render a decision with respect to the respondent's request to summarily dismiss the complaint.

[5] For the following reasons, I find that the complaint does not make an arguable case as its substance does not fall under the scope of the *Act* or the collective agreement.

II. The factual context of the complaint

[6] On November 22, 2018, five co-workers of the complainant, who were also members of the union, made individual workplace-violence complaints ("the CLC complaints") against her under the since-repealed Part XX of the *Canada Occupational Health and Safety Regulations* (SOR/86-304; "*COHSR*").

[7] As was then required by the provisions of the *COHSR*, the employer appointed a competent person to investigate the CLC complaints. In June 2019, the complainant and the co-workers who made the CLC complaints ("the CLC complainants") were interviewed by this competent person. The union's local vice president attended the complainant's interview as an observer.

[8] Shortly after the competent person interviewed the complainant and the CLC complainants, complaints were made against the competent person who was dismissed before completing a report. After that dismissal, the union also received a complaint from one of the CLC complainants with respect to the fact that it was representing both the complainant and the CLC complainants, contrary to its policy and guidelines on member-against-member complaints.

[9] Therefore, a decision was made by a labour relations advisor with the union, Shane O'Brien, to ask the union's regional vice president to conduct what is referred to as a "*prima facie* or internal fact-finding investigation" to determine who, if anyone, would be provided with union representation during future interviews with the new competent person, who was yet to be appointed by the employer.

[10] After his internal fact-finding investigation was completed, the regional vice president determined that in his opinion, there was a *prima facie* case with respect to the CLC complaints. On December 6, 2019, the complainant was advised by the union's local president that she would no longer receive union representation in the next steps of the CLC complaints investigation.

[11] Later, the complainant was informed by Mr. O'Brien that while the union would not offer her representation in the context of the CLC complaints investigation, it

would still provide her with some assistance by explaining the process, answering her questions, and providing her with copies of its policy and guidelines related to member-against-member complaints. The union also reassured the complainant that if the investigation resulted in a disciplinary penalty, she would then be provided with representation if it was determined that the quantum of discipline was unwarranted, severe, or excessive.

[12] The complainant made the present complaint on February 13, 2020, which had an attached detailed document enumerating all the allegations in support of her complaint. The document can be divided in two sections that can be summarized as follows.

[13] The first half of the document contains a narrative of the facts that led to the union's decision to deny her union representation, as well as a few allegations directed toward the union or its representatives. The complainant alleges that the union's decision to cease its representation of her in the context of the CLC complaints investigation process was based on a seriously flawed, biased, and procedurally unfair investigation that it conducted. She also alleges that the union did not interview her before it made its decision and that she was not provided with the CLC complainants' names; nor did she receive a copy of the allegations against her.

[14] The second half details allegations directed toward the CLC complainants, some specific union representatives, and the employer. The complainant alleges that the allegations made against her in the CLC complaints were egregious because they forced her to constantly defend her integrity. For example, she describes in detail why the CLC complaints are unfounded; how the CLC complainants made false and malicious allegations; how her co-workers mistreated her and allegedly violated the employer's code of conduct or workplace policies and should be disciplined for it; how the CLC complaints affected her financially, physically, and psychologically; and how management abused its authority to demean her and create a poisoned work environment. For the reasons explained later in the decision, I have not addressed in detail these allegations as the complaint is only against the respondent.

III. Summary of the arguments

A. For the complainant

[15] The majority of the complainant's arguments can be summarized by stating that according to her, the union acted without a rationale, in bad faith, with ill will, malice, hostility, and dishonesty by not informing her of, and excluding her from, its internal fact-finding investigation and by failing to represent her after that. The union's decision not to represent her was biased, not based on evidence or facts, and favoured the CLC complainants.

[16] Specifically, the complainant argues that the union demonstrated a lack of procedural fairness and neutrality as it had a legal obligation to investigate the facts and the circumstances of the CLC complaints made against her, but instead, it prejudged the issue even before conducting a full and proper investigation. Its fact-finding investigation should have been conducted in a fair and impartial manner. All parties must have had the opportunity to provide all relevant information and to have the union consider it. The complainant was not provided with that opportunity as she was never informed of, or permitted to attend, the fact-finding meetings that the union conducted. Therefore, the union was grossly negligent, and it acted in an arbitrary, capricious, discriminatory, and wrongful manner by not conducting a proper fact-finding investigation into the merits of her case and by excluding her from the process.

[17] The complainant further argues that the union withheld all the allegations in the CLC complaints and that she was not presented with that information until January 2020. According to her, it was the union's duty, while representing her, to provide her with those allegations from the employer.

[18] Finally, the complainant alleges that she was discriminated against. The union represented the CLC complainants during the investigation, but she was not provided with any union representation. According to her, she was the only person with a disability, and still, the union excluded her from the fact-finding investigation and failed to represent her.

B. For the respondent

[19] The respondent denies the complainant's allegations that it and its representative violated their duty of fair representation toward her. More precisely, the union argues that the complainant had the onus to establish the grounds for a

violation of the duty of fair representation. It submits that this requires that the subject matter of a complaint made under s. 190 of the *Act* must engage rights under the relevant collective agreement or the *Act*. In this case, the complainant primarily alleges that the union failed to represent her in the context of the competent person's investigation of the CLC complaints. Therefore, the substance of this complaint concerns processes under former Part XX of the *COHSR*.

[20] The union submits that the *COHSR* support Part II of the *Canada Labour Code* (R.S.C., 1985, c. L-2; "the *Code*"), and that the Board's jurisdiction under the *Code* is limited to s. 133. The matters that the complainant alleges do not fall under s. 133 of the *Code*. The *COHSR* are also outside the relevant collective agreement's scope. As a result, the complaint raises issues that are not adjudicable before the Board and therefore do not invoke the duty of fair representation set out in s. 187 of the *Act*.

[21] The respondent further submits that at the time the complaint was made, no discipline had been imposed on the complainant; nor had she filed any grievances. Therefore, the complaint is premature and should be dismissed.

[22] The respondent also argues that the complainant does not establish in her complaint how any of her allegations are linked to any ground of discrimination. The complaint does not provide any indication that her disability resulted in any adverse treatment or effect by the union. She simply makes bald assertions without supporting facts or evidence, and according to the respondent, the complaint does not establish a *prima facie* case of discrimination on its part, based on disability or any other protected grounds.

[23] Finally, the union takes the position that the complainant raises several issues in her complaint that are not within its power or authority to address and therefore also do not fall within the context of a complaint that can be made under s. 190 of the *Act*.

[24] In its submissions, the union referred me to *Elliott v. Canadian Merchant Service Guild*, 2008 PSLRB 3; *Brown v. Union of Solicitor General Employees*, 2013 PSLRB 48; *Exeter v. Canadian Association of Professional Employees*, 2009 PSLRB 14; *Shouldice v. Ouellet*, 2011 PSLRB 41; *Sayeed v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 44; *Ouellet v. Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN*, 2007 PSLRB 112; *Millar v. Public Service Alliance of*

Canada, 2021 FPSLREB 68; and *Gabon v. Public Service Alliance of Canada*, 2022 FPSLREB 2.

IV. Reasons

[25] In her complaint, the complainant clearly states that she made it primarily because the union violated its duty of fair representation by failing to represent her during the competent person's investigation into the CLC complaints. She takes issue with both the decision itself and how it was made.

[26] Section 190(1)(g) of the *Act* requires this Board to examine and inquire into any complaint made to it that the employer, an employee organization or any person has committed an unfair labour practice within the meaning of s. 185. Section 185 further specifies that "unfair labour practice" should be read as meaning anything prohibited by ss. 186(1) or (2), 187 or 188, or 189(1). The words that the complainant chose when she made her complaint clearly refer to s. 187 of 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.*

[27] To ultimately be successful with her complaint, the complainant would normally bear the burden of presenting sufficient evidence to demonstrate that on the balance of probabilities, the respondent breached its duty of fair representation by acting in a way that could be considered arbitrary, discriminatory, or in bad faith (see *Ouellet v. St-Georges*, 2009 PSLRB 107 at para. 31; and *Delgado-Levin-Turner v. Customs and Immigration Union*, 2013 PSLRB 136 at paras. 44 and 45). However, the respondent asks that the Board summarily dismiss the complaint since it does not demonstrate the existence of an arguable case that the union breached its duty of fair representation.

[28] Therefore, the initial burden is on the respondent to establish that the complaint reveals no arguable case of a breach of s. 187 of the *Act* (see *Delgado-Levin-Turner*, at para. 41). In its initial response to the complaint, it repeats abundantly that

the complaint should be dismissed because the complainant did not present evidence supporting most of her allegations. I find this somewhat disingenuous as this is exactly what a hearing on the merits would enable the complainant to do, but the respondent asks the Board not to hold one with its request for a summary dismissal.

[29] The reasons for dismissing such a complaint preliminarily without holding a hearing should not be based on the absence of evidence. Rather, it is to be based on the absence or insufficiency of alleged facts (not arguments or vague allegations) that if accepted as true, could demonstrate an arguable case of a breach of the duty of fair representation (see *Hughes v. Department of Human Resources and Skills Development*, 2012 PSLRB 2 at para. 86; and *Beniey v. Public Service Alliance of Canada*, 2020 FPSLREB 32 at paras. 5 and 57). This is the test I will apply.

[30] I will first address the principal ground suggested by the respondent to summarily dismiss the complaint, which is that its subject matter deals with processes that fall outside the collective agreement or the *Act* and that therefore do not engage the duty of fair representation set out in s. 187 of the *Act*.

A. The ambit of the duty of fair representation under s. 187 of the *Act*

[31] Both parties referred to *Elliott*, which is a key decision often cited by the Board when conducting an analysis of the application of s. 187 of the *Act*. For the present case, the following general principals can be taken from that decision.

[32] As a statutory tribunal, the Board's authority to act with respect to the duty of fair representation is derived exclusively from the *Act*. While s. 187 does not specify the ambit of this duty, since it is set out in the *Act*, it must relate to rights, obligations, and matters set out in the *Act*. As well, since one of the *Act*'s main objectives is to regulate the relationship between employees and their employer, the ambit of the duty of fair representation must also relate to that matter.

[33] As s. 208(4) of the *Act* prescribes that an employee cannot present an individual grievance relating to the interpretation or application of a provision of a collective agreement unless the employee has the approval of and is represented by the bargaining agent for their bargaining unit, the duty of fair representation applies to those matters since they are set out in the *Act* and concern the relationship of employees vis-à-vis their employer.

[34] For another example, the duty of fair representation set out in s. 187 would also apply to the bargaining agent in matters related to disciplinary action resulting in a termination, demotion, suspension, or financial penalty since they relate to the employee-employer relationship regulated by s. 209(1)(b) of the *Act*.

[35] This is how the Board has consistently approached the duty of fair representation set out in s. 187 and has consistently concluded that it must relate to rights, obligations, and matters that are set out in the *Act* or a collective agreement and that are related to the relationship between employees and their employer (see *Elliott*, at paras. 183 to 188; *Brown*, at paras. 52 and 54; *Hancock v. Professional Institute of the Public Service of Canada*, 2023 FPSLREB 51 at para. 84; and *Fidèle v. National Police Federation*, 2023 FPSLREB 48 at para. 16).

[36] The parties did not argue that I should depart from that approach, and I see no reason to. Accordingly, the complainant must demonstrate that her allegations are tied to such matters that fall under the collective agreement or the *Act*.

B. Does a complaint made under the *COHSR* fall under the *Act* or the collective agreement?

[37] While, as I said earlier, the respondent has the onus with respect to its request for a summary dismissal, the complainant still has the onus to respond to that preliminary request by providing sufficient specific factual allegations that if taken as true, could arguably establish a violation of the respondent's duty of fair representation (see *Payne v. Public Service Alliance of Canada*, 2023 FPSLREB 58 at para. 59; and *Delgado-Levin-Turner*, at para. 45).

[38] Most of the factual elements in the complainant's submissions are ultimately related, one way or the other, to one thing: the investigation by a competent person following the CLC complaints made against her under the *COHSR*.

[39] The allegations related to the union are mostly linked to its decision not to represent her in the context of the investigation by a competent person mentioned earlier in this decision. In the main, the complainant's allegations refer to the process that the union followed to make that decision through what the parties refer to as a *prima facie* fact-finding analysis that it conducted with respect to the merits of the CLC complaints. For the complainant, the union's decision and behaviour were arbitrary, discriminatory, and in bad faith.

[40] My view is that the union's decision and its behaviour with respect to it are related to something that does not stem from the collective agreement or fall within the scope of the *Act*.

[41] The CLC complaints made against the complainant were made under the since-repealed Part XX of the *COHSR*, which was made under Part II of the *Code*.

[42] When it comes to the *Code*, it is well established that the Board's jurisdiction under the *Act* is very limited and restrained to complaints dealing with ss. 133 and 147 (see *Burlacu v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 51 at paras. 76 and 77). Those provisions do not concern complaints made under Part XX of the *COHSR*.

[43] As stated earlier in the decision, the Board takes its jurisdiction from the *Act*. While clearly, I have jurisdiction to rule on this complaint, its allegation must still be related to matters that fall under the *Act* or the collective agreement to engage the duty of fair representation set out in s. 187 of the *Act* (see *Elliott*, at para. 170).

[44] Similarly to s. 123(2) of the *Code*, s. 240 of the *Act* prescribes that Part II of the *Code* applies to the persons employed in the public service as defined in s. 239 of the *Act*. However, it also specifies precisely and narrowly how that application is to interplay with the other provisions of the *Act* for the purpose of that application.

[45] Section 240(a) of the *Act* determines the meaning to be given to certain words of Part II of the *Code* when applied following that section. Section 240(b) no longer applies since it was repealed in 2019. The last paragraph, s. 240(c), ultimately prescribes that the provisions of the *Act* apply in respect of matters brought before the Board.

[46] The Board does not normally have jurisdiction to hear matters related to Part II of the *Code*, and those matters should be brought before the proper bodies identified in that part. As an example, in Part II of the *Code*, the word "Board" normally refers to the Canada Industrial Relations Board, as defined by s. 2 of the *Code*. However, s. 240(a)(ii) of the *Act* makes one exception as it stipulates that for the purposes of ss. 133 and 134 of the *Code*, "Board" is to be read as a reference to the Federal Public Sector Labour Relations and Employment Board.

[47] Therefore, as stated in *Burlacu*, s. 240 of the *Act* sets out the Board's mandate to hear what are generally called "reprisal complaints" made under s. 133 of the *Code* for actions that an employer would have taken in contravention of s. 147 of the *Code*. In those cases, the Board could order an employer to remedy the situation pursuant to s. 134 of the *Code*. The *Act*, through s. 240 or any other of its provisions, does not give the Board jurisdiction to hear any other matters related to Part II of the *Code*.

[48] Hence, when it comes to Part II of the *Code*, the application of s. 240(c) of the *Act* means that the provisions of the *Act*, such as s. 187, would apply only for matters brought before the Board pursuant to s. 133 of the *Code*. Once again, the CLC complaints were made under the *COHSR*, not s. 133 of the *Code*.

[49] Moreover, nothing in the repealed Part XX of the *COHSR* refers to the representation of an employee or suggests any obligation for a union to represent an employee in circumstances such as an investigation by a competent person appointed under that part.

[50] The union is not limited to representing its members only in matters linked to the *Act* or the collective agreement, but when it does, as it did initially in this case, it does so voluntarily. That does not result in the duty of fair representation in s. 187 of the *Act* being actioned automatically, as the matter still falls outside of the scope of the *Act* or the collective agreement (see *Elliott*, at paras. 195 and 198; *Millar*, at para. 19; and *Abi-Mansour v. Public Service Alliance of Canada*, 2022 FPSLREB 48 at para. 78).

[51] As for the collective agreement, only article 22 specifically refers to the *Code*. Clause 22.01 is a recognition by the parties to the collective agreement that Part II of the *Code* and all provisions and regulations flowing from the *Code* govern occupational safety and health at the Canada Revenue Agency. Clause 22.02 stipulates that the employer will make reasonable provisions for the occupational health and safety of employees as well as a path for cooperation between it and the bargaining agent to prevent or reduce the risk of employment injury.

[52] In *Ristivojevic v. Canada Revenue Agency*, 2020 FPSLREB 79 at para. 242, the Board concluded that article 22 is consultative and that the employer's obligation flowing from it is to the bargaining agent, not to an individual grievor (see also *Payne v. Treasury Board (Department of National Defence)*, 2021 FPSLREB 67 at paras. 93 to 99, 113 and 145). Nothing in that article or elsewhere in the collective agreement

suggests that the bargaining agent would have a duty of representation for matters under the *Code*. Moreover, the complaint makes no reference to any grievances that the complainant filed or should have filed; nor does it raise any breach by the union of its duty of fair representation in that context.

[53] Therefore, I must conclude that all the complainant's allegations related to the union's failure to represent her in the context of the competent person's investigation of the CLC complaints, or its decision-making process to deny such representation, fall outside the scope of s. 187 of the *Act* or the collective agreement and therefore do not engage the duty of fair representation that the Board may review under that section (for a similar conclusion, see *Hancock*, at paras. 89 and 92).

[54] Despite that conclusion, I still must determine if any other factual allegation that the complainant makes in her complaint could demonstrate the existence of an arguable case under s. 187 of the *Act*.

C. Are there other factual allegations in the complaint that could demonstrate the existence of an arguable case under s. 187 of the *Act*?

[55] The complainant alleges that both the union and management failed to take all reasonable steps to prevent discrimination, harassment, bullying, and workplace violence and that they failed to protect employees with protected characteristics or disabilities from adverse or differential treatment and psychological trauma.

[56] The complainant further alleges that the employer and the union contravened and violated the relevant collective agreement provision often referred to as the "no-discrimination clause". Initially, she suggested that this violation would be based on a psychiatric and visual disability. However, in her final submissions, she seems to widen her discrimination allegations by suggesting that it would also be based on sex, race, and ethnic origin. She states that management was very well aware of her psychiatric and visual disability, yet it refused to take a proactive role and create an inclusive and respectful workplace or eliminate the workplace stigmas, barriers, violence, harassment, bullying, and discrimination.

[57] Finally, the complainant mentions that everyone has the right to be free from discrimination, including an employee with protected characteristics. According to her, this means that the union and management both have the duty not to discriminate against employees and to take all reasonable steps to avoid negative effects based on a

personal characteristic. She specifies that according to her, this is called the "duty to accommodate".

[58] My analysis of those allegations follows. In summary, obviously, the complainant alleges that she was subject to harassment and discrimination in what she refers to as a toxic work environment. She takes the position that the employer and the union failed to do something to correct it. Most of the harassment and discrimination allegations that she made were directed toward some co-workers who also appear to have been members of the union. A few other allegations seem to suggest that some team leaders or union officers harassed her or discriminated against her.

[59] As mentioned earlier in the decision, the duty of fair representation is meant to address matters in which a union represents one of its members in their dealings with the employer (see *Shutiak v. Union of Taxation Employees — Bannon*, 2008 PSLRB 103 at para. 19). Only in that circumstance will the union's behaviour be subject to scrutiny under s. 187 of the *Act*.

[60] For allegations against co-workers or union's officers outside of their official representation role, it has been long established in the jurisprudence that the focus of such allegations are considered a union's internal matter and that the Board has no jurisdiction to intervene in them (see, for example, *Kraniauskas v. Public Service Alliance of Canada*, 2008 PSLRB 27; *Shutiak*; and, more recently, *Leach v. Public Service Alliance of Canada*, 2020 FPSLREB 101).

[61] As for the allegation against the employer, this complaint under s. 187 of the *Act* is not the right process to raise and resolve those issues. The appropriate way to address them would normally be through filing grievances against the employer (see *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119 at para. 164). Doing so could potentially engage the union's duty of fair representation. However, this complaint makes absolutely no reference to any grievance filed by the complainant or to the fact that the union would have refused to file such a grievance for her.

[62] From the complainant's point of view, it seems that mostly, the union had the duty to react to her situation on its own as it was already aware of her disability and of the toxic workplace issues that allegedly had been going on for a long time. I respectfully disagree. The union cannot be expected to respond to her representational

needs if she did not request its representation (see *Kraniauskas*, at paras. 130 and 131).

[63] In this complaint, the complainant's only allegations about a representation request were in the context of the CLC complaints that I have already ruled on. In its final reply, the respondent confirms that in fact, the complainant had recourse to the grievance procedure, and that it represented her in numerous grievances. However, once again, nowhere in the complainant's detailed submissions can I find any allegations that the union breached its duty of fair representation in relation to any of those alleged grievances. Therefore, it is impossible for me to conclude that such a possible breach occurred, in the absence of any allegations suggesting its existence.

[64] Consequently, I must conclude that nothing in the complaint, the submissions, and the documentation presented to me could demonstrate the existence of an arguable case under s. 187 of the *Act* and enable the complainant to move forward and have her complaint heard on the merits. Simply, nothing supports that option.

[65] The complainant seems primarily motivated by the desire to clear her name following all her co-workers' allegations. However, she must understand that the Board's role with respect to s. 187 of the *Act* is quite limited and that it should not be seen as having a role similar to an ombudsperson or any other investigative body (see *Burns*, at para. 160). Other recourses may be open to her to address all the issues she alleged in her submissions, but not this one under ss. 190(1)(g) and 187 of the *Act*.

[66] Considering my conclusions that the complaint does not make an arguable case under s. 187 of the *Act* on the basis of the respondent's principal argument, I need not continue the analysis with respect to the other grounds it advanced in its request for a summary dismissal.

[67] In her final submissions, the complainant referred me to *Elliott*; *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509; *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39; *McRaeJackson v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, 2004 CIRB 290; and *Sganos v. Association of Canadian Financial Officers*, 2022 FPSLREB 30. I considered their principles when they were relevant to the analysis of this case.

[68] However, the complainant also referred me to multiple decisions about the fairness that should be given to an employee being investigated for misconduct in the context of a disciplinary process that leads to an employer imposing different forms of discipline. She also cited multiple decisions concluding bad faith from the employer in circumstances in which investigations were found flawed or unfair. While I reviewed them, I did not find them relevant in my analysis as their principles are strictly not related to the essence of this complaint.

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

(The Order appears on the next page)

V. Order

[70] The complaint is dismissed.

November 16, 2023.

Pierre Marc Champagne,
a panel of the Federal Public Sector
Labour Relations and Employment Board