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Citation: 2023 FPSLREB 101

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

MICHEL POTHIER

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Pothier v. Public Service Alliance of Canada

In the matter of complaints made under s. 190 of the *Federal Public Sector Labour Relations Act*

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Marie-Pier Dupont, counsel

Heard via videoconference,
July 4 to 7, August 16 to 18, and September 19, 2023.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Complaints before the Board

[1] Between April 22, 2022, and March 16, 2023, Michel Pothier ("the complainant") made four complaints against the Public Service Alliance of Canada ("the respondent") alleging it of unfair labour practices within the meaning of s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The complainant alleged that the respondent repeatedly breached its duty of fair representation, thus contravening s. 187 of the *Act*.

[2] Natural Resources Canada ("the employer") hired the complainant in August 1988. He said that on March 28, 2022, he was obligated to take forced retirement. The issue of forced retirement will be discussed later as it is addressed in one of the four complaints that are the subject of this case. During his 31 years with the employer, the complainant was part of the EG group. From 1997, his position was classified at the EG-05 group and level. The initialism EG refers to the "Engineering and Scientific Support" group, which is part of the "Technical Services" group designated by the TC initialism. The respondent is the bargaining agent for the TC group.

[3] Section 4 of complaint form no. 561-02-44574, made on April 22, 2022, contains a brief outline of each action, omission, or situation that gave rise to the complaint. In section 5 of the form, the complainant stated that he became aware of it on April 11, 2022. Section 4 of the form reads as follows:

> [Translation]
>
> *On April 11, 2022, I received a letter from the union's counsel informing me that the PSAC had decided to end its representation of harassment grievance #566-02-39864, which was confirmed to the Board on April 12 and 13, 2022. Since the grievance involves collective agreement provisions, the union has an obligation to represent me because I am prohibited from representing myself. The union is an accomplice of the employer, etc.*

[4] I also reproduce s. 11 of complaint form no. 561-02-44574, as it deals with other situations that gave rise to the complaint. That section states as follows:

> [Translation]
>
> …

> *- The union refused to represent me before the TAT and before the Federal Court.*
>
> *- The union refused to represent me for the employer's refusal of its obligation to accommodate after a disability leave of more than 3 years.*
>
> *- I was obligated into forced retirement as the employer accepted only an unpaid six-month sick leave. It constitutes constructive dismissal and a financial penalty.*
>
> …

[5] Section 4 of complaint form no. 561-02-44808, made on May 20, 2022, contains a brief outline of each action, omission, or situation that gave rise to the complaint. In section 5 of the form, the complainant stated that he became aware of it on May 20, 2022. Section 4 of the form reads as follows:

> [Translation]
>
> *Ms. Chapman of the UCTE is responsible for my work-description grievance. She grants excessive extensions to the employer at the final level of the grievance process despite my refusal, as mentioned in clause 8.22 of the collective agreement. The 20 days have expired. She wants a hearing that would be on May 26 plus another extension for the answer. Refusal to refer to adjudication within the time limits.*

[6] Section 4 of complaint form no. 561-02-45552, made on August 30, 2022, contains a brief outline of each action, omission, or situation that gave rise to the complaint. In section 5 of the form, the complainant stated that he became aware of it on August 26, 2022. Section 4 of the form reads as follows:

> [Translation]
>
> *I accuse the PSAC and its representatives of harassment as they have repeatedly belittled and downplayed my work, in addition to not honouring my agreements, have granted extensions without my agreement in an exaggerated and abusive way, have shown bad faith, and have been grossly negligent in the defence of my rights. The PSAC refuses to represent my work-description grievance, which is contrary to its obligations. There was an extreme lack of diligence on the union's part.*

[7] Section 4 of complaint form no. 561-02-47023, made on March 16, 2023, contains a brief outline of each action, omission, or situation that gave rise to the complaint. In section 5 of the form, the complainant stated that he became aware of it on March 13, 2023. Section 4 of the form reads as follows:

> [Translation]
>
> *I accuse the PSAC of refusing to represent me on my work-description grievance, which has been ongoing since 2004 and prevents me from asserting my rights as I cannot represent myself with a problem related to my collective agreement. The PSAC is an accomplice of the employer and does not meet its obligations.*

[8] I did not think that it would be appropriate to reproduce section 11 of complaint forms no. 561-02-44808, 561-02-45552, and 561-02-47023, as I did for complaint no. 561-02-44574, because the section 11s of those complaints do not address other or new situations not discussed in section 4 of the form.

II. Summary of the evidence that the complainant submitted

[9] I will not repeat, or even try to summarize, the contents of the thousands of pages of documents that the complainant presented during the four days of his testimony. Much of what he presented is well beyond the allegations in the complaints or clearly predates the 90-day time limit under s. 190(2) of the *Act*. Nevertheless, at the hearing, I gave the complainant a great deal of latitude while reminding him more than once about the content of his complaints and what they were about, as well as the existence of the 90-day time limit under the *Act*.

[10] Most of the complainant's submitted testimonial and documentary evidence implicates not the respondent but rather the employer, which the complainant blames for treating him unfairly for years by not recognizing the value of his work, by not providing him with a work description that reflected his duties, by belittling him, by harassing him, and ultimately by forcing him to retire. As for the respondent, it allegedly breached its duty of fair representation by not representing the complainant as it should have. The respondent submitted evidence, according to which its opinion is that it did not breach its duty of fair representation. However, the employer did not apply for intervenor status. I do not have its version of the facts as to the multiple instances of blame that the complainant laid against it.

[11] The complainant asked me to accept as evidence the audio recordings of a hearing of several days that he had at the Tribunal administratif du travail du Québec (TAT) in connection with a workers' compensation claim that had been denied him. That hearing had not yet completed when this decision was written. The complainant submitted that the recordings include testimonies of employer representatives who

admitted that the complainant carried out certain design and development tasks, which the employer had previously denied. In response to my question, the complainant admitted that the respondent had not had access to the recordings before making decisions about the refusal to represent his grievances at adjudication.

[12] I refused to accept the recordings as evidence for two reasons. First, the respondent could not have based its representation decisions on evidence that it did not know existed. Therefore, the evidence is not relevant to assessing whether the respondent breached its duty of fair representation. Second, the employer representatives' statements cannot be examined and questioned as they were not called as witnesses.

A. Summary of the contextual items that the complainant presented

[13] When he was hired in 1988, the complainant was assigned to a position at the EG-02 group and level. Later that same year, he was promoted to the EG-03 group and level after completing an initial training period.

[14] In May 1995, the complainant was appointed on an acting basis to a position at the EG-05 group and level, which was a senior project officer position. According to the complainant, the position required correcting, improving, and developing software components in the area of geographic or cartographic data. Then, in 1997, the complainant was appointed to that position indeterminately. The profile of the particular position that the complainant was in involved "[translation] support and development" functions. However, the employer never adjusted the complainant's work description to reflect those duties. Rather, the work description set out "support" functions. Since then, the complainant has never ceased requesting changes to his work description and his position's classification. According to the complainant, the tasks of the "support and development" position are not tasks of the EG-05 group and level but tasks of programmer analysts in the CS group, now known as the IT (Information Technology) group, or tasks of the EN-SUR (Engineer-Survey) subgroup.

[15] The complainant submitted extensive documentation to support his claims. Without questioning the complainant's position, I note that the employer did not intervene at the hearing to present its position. Therefore, I have only the complainant's position. For the most part, the submitted documents are about designing and developing computer or programming tools for cartographic or related

applications. They are dated 2001 to 2017. The computer tools were conceived or produced at the time by the complainant alone or by a team of two or three people of which the complainant was part.

[16] The complainant also submitted the classification standards for the EG, CS (IT), and EN-SUR groups. It is clear to him that design and development work is specifically excluded from the EG classification standard and that instead the work belongs to the CS (IT) or the EN-SUR group. The evidence that the complainant submitted is quite convincing, but I note that on this point, I do not have the employer's version.

[17] On February 24, 2004, the complainant filed a grievance requesting a complete and up-to-date statement of his duties. On April 7, 2004, the complainant filed another grievance, this time accusing the employer of intimidation, harassment, and retaliation after the grievance dated February 24, 2004, was filed. As part of an agreement with the employer to resolve his grievances, the complainant obtained a two-year education leave with pay beginning in January 2007 to complete a Bachelor of Computer Science degree. In return, he agreed to withdraw his grievances.

[18] The complainant completed his Bachelor of Computer Science degree in July 2009. In the meantime, he filed new grievances, including one about his work description, because he felt that the employer failed to meet its commitments. The respondent referred the new grievances to adjudication in September 2009. The complainant then blamed the employer for not offering him a higher-level position, either as an EN-SUR or a CS, when he completed his studies. In 2010, the complainant unsuccessfully applied for positions at the EN-SUR-02 and EN-SUR-03 group and levels. During that period, he continued to perform duties that according to him did not correspond to his work description.

[19] On June 17, 2010, the complainant met with his family doctor, who "[translation] removed" him from work for an indeterminate period. The complainant then submitted an application to the Commission des normes, de l'équité, de la santé et de la sécurité du travail du Québec. Then, on September 27, 2010, he gradually returned to work. According to the complainant, the return to work did not go so well. During his performance assessment, he felt persecuted. The conflict escalated to the point that in August 2011, the complainant allegedly told the employer this: "[translation] You never know what can happen in a fight." The employer apparently

then demanded that the complainant leave the workplace. It reportedly placed him on paid leave and required him to meet with a Health Canada psychiatrist.

[20] The meeting took place on January 10, 2012. In a report dated February 29, 2012, the Health Canada psychiatrist concluded that the complainant was unfit to work and that he was suffering from persecution delusions. Then, in July 2012, the respondent agreed to pay for a medical second opinion. The psychiatrist who performed the second assessment concluded that the complainant was not suffering from any persecution delusions and that he was fit to work. On August 5, 2013, the complainant returned to work on a gradual basis.

[21] The complainant's work-description grievance that was referred to adjudication in 2009 was heard in March 2014. The parties then entered into an agreement to add two statements to the complainant's key activities. The agreement provided that the employer would then amend the remainder of the work description to reflect the impact of the two statements on the required knowledge, responsibilities, and effort. However, according to the complainant, the employer did not do what it had to , and nothing was changed in the work description except the two statements. The work description was then sent to the classification section, which determined in June 2014 that the position was properly classified at the EG-05 group and level. On June 10, 2014, the respondent reportedly withdrew the complainant's work-description grievance and filed a grievance on his behalf challenging the classification of his position. The complainant disagreed with that approach.

[22] In December 2014, the complainant participated in a classification training session that the respondent offered. As a result, he stated that he realized that software support and development tasks were excluded from the EG classification standard and that the employer had acted in bad faith and had abused its authority since 1995, when it added the "support" profile to positions at the EG-05 group and level, as they required design and development activities, contrary to the EG classification standard.

[23] In 2017, the complainant and the respondent's representatives responsible for classification representation had several exchanges. In one of them, the complainant accepted the respondent's suggestion to request a job-validation review of his position. The complainant stated that then, when he researched the subject, he noted bad faith

and abuse of authority by both the employer and the respondent because according to him, the validation should have been done in 1995.

[24] A consultant that the employer hired completed the job validation. In the consultant's report dated October 18, 2017, the consultant concluded that the complainant's work description did not correspond to his duties. On October 31, 2017, the complainant agreed that the consultant would prepare a new work description.

[25] The October 18, 2017, report had comments from the employer that in the complainant's opinion, downplayed and belittled his work. On October 19, 2017, the complainant asked the employer to withdraw the comments in question, failing which he would make a harassment complaint. Since the employer did not withdraw its comments by October 30, 2017, the complainant notified the respondent's local representatives that he wanted to make the complaint. A harassment grievance against the employer was made on November 21, 2017. Then, the complainant also made a harassment complaint on November 30, 2017, with the goal of an external investigation into workplace violence being carried out.

[26] On January 31, 2018, the complainant received a first draft of the new work description prepared by the consultant. The next day, the complainant informed the respondent that he did not agree with the draft of the new work description. On February 7, 2018, he communicated his concerns to the employer. Then, in May 2018, the complainant spoke with a representative from the respondent's national office, to set out what was wrong with the draft work description. The representative supposedly then told him that it was frowned upon to defend a union member who made claims against a professional group represented by another bargaining agent. She also allegedly made that comment to a local representative of the respondent who is a colleague of the complainant. The colleague confirmed that information by email to the complainant. The email was adduced in evidence.

[27] In October 2018, the complainant received his performance assessment report, the content of which he felt was incorrect. On October 15, 2018, he filed a grievance challenging the report. According to him, the employer and the union "[translation] ignored" his grievance.

[28] In November 2018, the complainant informed the employer that he would refuse any new task until his work description was adequate and his grievances were

resolved. The employer reportedly replied to the complainant that he had received a new work description on January 31, 2018, and that the duties it asked him to perform were included in that work description. It apparently added that the complainant's refusal would be considered insubordination that could lead to dismissal. The complainant reportedly told the employer to stop harassing, threatening, and intimidating him. He reportedly added "[translation] … before things escalate and something terrible happens."

[29] After the complainant made those comments, the employer sent him home and granted him leave with pay for "[translation] other reasons". The employer asked the complainant to consult his doctor for a fitness-to-work evaluation. The doctor reportedly refused to perform that evaluation. Instead, Health Canada carried out the evaluation in question, and on April 12, 2019, it declared the complainant unfit to work. The employer then informed the complainant that he had to retire or resign before May 10, 2019; otherwise, he would be dismissed. The complainant then decided to make an application for disability insurance, which was accepted. On July 16, 2019, the employer informed the complainant that the May 10, 2019, ultimatum was postponed because his disability insurance application had been accepted.

[30] The investigation into the complainant's harassment complaint started in July 2019. A consulting firm outside the employer conducted it and produced its investigation report on October 15, 2019. The firm's investigator concluded that no harassment had occurred against the complainant. According to the complainant, the investigator was not impartial and colluded with the employer by failing to comply with the guide for harassment investigations.

[31] In March 2021, the complainant was still receiving disability insurance benefits. The insurer then told him that his benefits would continue, as for the moment, he was still unable to perform the duties of any profession or job. In August 2021, the employer informed the complainant that Health Canada was then unable to conduct medical assessments and that instead, an independent medical assessment would be proposed.

[32] In October 2021, the firm CompreMed carried out the evaluation in question. It released its report on January 4, 2022. The doctor who assessed the complainant concluded that the complainant suffered from a condition that required very concise

and clear instructions and expectations. The doctor also concluded that the fact that his work description was not exact caused him stress and anxiety and that the situation could be resolved if his responsibilities were limited to his work description.

[33] On January 26, 2022, the insurer notified the complainant that it was terminating his disability insurance benefits as a result of CompreMed's report.

[34] On February 5, 2022, the respondent agreed to file a new grievance challenging the January 31, 2018, work description, which the employer had never finalized.

[35] On February 23, 2022, the complainant met with the employer in the presence of a respondent representative, to discuss his return to work. According to the complainant, the employer apparently maintained its position that a new, adequate work description had been provided to the complainant in January 2018. He then informed the employer that he would not return to work until the problems of his work description and the classification of his position were resolved. It is important to add that the documentation adduced in evidence unequivocally sets out that at the February 23, 2022, meeting, the employer offered the complainant to return to work in a new position at the EG-05 group and level with clear and specific work objectives.

[36] On March 6, 2022, the complainant asked the employer if he could take his remaining vacation leave. The employer accepted the request, so the complainant was on vacation leave until March 29, 2022, with a scheduled return-to-work date of March 30, 2022.

[37] On March 10, 2022, the complainant asked the employer to grant him leave with pay as of March 30, 2022, as an accommodation, while the problems of his work description and the classification of his position were corrected and until the legal action he had taken was completed. The employer refused the request and instead offered the complainant sick leave without pay for a period of six months.

[38] On March 28, 2022, the complainant informed the employer that he had to take forced retirement as he could not afford sick leave without pay for six months. The complainant then filed a grievance without the respondent's support for a breach of the duty to accommodate, constructive dismissal, and financial penalty.

B. Summary of the complainant's evidence directly related to complaint no. 561-02-44574

[39] On April 11, 2022, counsel for the respondent informed the complainant that she would no longer represent at adjudication his harassment grievance against the employer, which was filed on November 21, 2017. In that grievance, the complainant alleged that some of the employer's representatives had harassed him. He also blamed the employer for inaction since 1995 with respect to following up on his classification file.

[40] In October 2017, the complainant also made a harassment complaint against the employer. He then claimed that the employer had disparaged, belittled, and humiliated him since he filed his work-description grievances. He also claimed that the employer refused to acknowledge his work.

[41] The complainant also filed a grievance in 2018 to challenge his performance evaluation report, in which the employer supposedly belittled him and downplayed the value of his work, which contributed to the harassment he suffered. Also in 2018, the complainant made a staffing complaint after a competition to fill an EN-SUR-02 position that he did not obtain. He claimed that he had suffered reprisals related to filing his work-description grievances.

[42] The Federal Public Sector Labour Relations and Employment Board ("the Board") was supposed to hear the complainant's harassment grievance from May 24 to 26, 2022. In preparation, counsel retained by the respondent to represent the complainant called him to a one-hour meeting by videoconference to discuss his case. However, the complainant informed counsel that it was necessary to "[translation] allow plenty of time to go through all the points to be discussed".

[43] On April 11, 2022, counsel for the respondent informed the complainant that the respondent had withdrawn its support for his harassment grievance.

[44] On March 28, 2022, the complainant informed the employer that he was taking forced retirement. On the same day, he filed the grievance for a breach of the duty to accommodate, constructive dismissal, and financial penalty. The employer dismissed the grievance at the final level of the grievance process on May 25, 2022. In its response, the employer stated that the complainant represented himself without the respondent's support on what was preventing, according to the employer, the

application of the no-discrimination clause of the applicable collective agreement. On May 27, 2022, the complainant referred his grievance to adjudication. The Board has not yet set the dates for the grievance hearing.

[45] On March 28, 2022, the respondent wrote to the complainant to inform him that adjudicators do not have jurisdiction to hear a resignation grievance. It also informed him that it did not believe that it was possible to argue that the employer breached its duty to accommodate the complainant.

C. Summary of the complainant's evidence directly related to complaint no. 561-02-44808

[46] In this complaint, the complainant blames the respondent for granting the employer extensions at the final level of the grievance process, despite his refusal to grant such extensions.

[47] On April 20, 2022, the complainant wrote to a respondent representative, stating that he understood that she had granted the employer an extension to respond to his work-description grievance so that the employer would have time to assess the work description's classification. The complainant then asked the respondent's representative to cancel the extension, as the employer appeared to want to assess the work description of January 2018. The complainant had already repeatedly expressed his disagreement with that work description. By refusing to grant the employer the extension in question, the complainant wanted to proceed to adjudication as soon as possible.

[48] To support his complaint, the complainant submitted in evidence a letter from the respondent dated April 20, 2022, informing him that it had to close his classification-grievance file as it had been filed outside the time limit. According to the respondent, the classification decision was made on May 2, 2014, and the classification grievance was filed on June 25, 2014, 19 days after the prescribed 35-day time limit. Instead, the complainant claimed that he received the employer's explanations on June 3, 2014, and that he submitted his signed grievance on June 10, 2014. He also questioned the fact that it took 8 years for the employer to inform him of its decision to deny his grievance because of missed deadlines and that in the meantime, the respondent did nothing.

D. Summary of the complainant's evidence directly related to complaint no. 561-02-45552

[49] This complaint is multifaceted. To avoid duplication, I will limit myself to the allegation that the respondent harassed the complainant by repeatedly belittling and downplaying his work and by not respecting the agreements entered into with the employer. The other facets of this complaint are already the subjects of the other complaints discussed in this decision.

[50] The complainant submitted an email dated August 26, 2022, in which he states that Jean-Rodrigue Yoboua, a respondent representative, tried to downplay and belittle his work as the employer and respondent had been doing for several years, claiming that his tasks are at the EG-05 group and level. The complainant asked Mr. Yoboua to stop belittling and downplaying his work and to do his job of representing him.

[51] The complainant also submitted two agreements that were entered into after the mediation of grievances that were referred to adjudication. The first is dated 2006, and the second, 2014. The complainant argued that the agreements were only partially complied with, for which he blames the employer and the respondent.

E. Summary of the complainant's evidence directly related to complaint no. 561-02-47023

[52] In this complaint, dated March 16, 2023, the complainant blames the respondent for refusing to represent his work-description grievance filed on January 27, 2022. Initially, the respondent's local representative supported filing the grievance. The respondent represented the complainant at the second and final level of the grievance process. The employer dismissed the grievance at the final level, both on the merits and on the issue of the 25-day time limit to file a grievance.

[53] The respondent referred the grievance to adjudication and informed the complainant of its reluctance to do it, considering, among other things, the issue of the time limit that the employer raised. On March 8, 2023, the respondent informed the complainant that it was withdrawing its support for the grievance as it had obtained the complainant's work-description classification report in effect since January 31, 2018. The respondent provided the complainant with the documentation received from the employer.

[54] The respondent also informed the complainant that he had 35 days to file a classification grievance. The complainant filed such a grievance on March 14, 2023. However, he said that he was aware of the limitations of a grievance about a work description that did not reflect the tasks that he was performing.

III. Summary of the evidence that the respondent submitted

A. Ms. Chapman's testimony

[55] The respondent adduced 38 documents in evidence. It also called as witnesses Marie-Claude Chapman, Andrew Beck, and Mr. Yoboua. As of the facts about which they testified, Ms. Chapman was a labour relations officer with the Natural Resources Union and then with the Union of Canadian Transportation Employees, which are two parts of the respondent that merged in 2017. Ms. Chapman provided representation services at the higher levels of the grievance process to the employees of Natural Resources Canada, of which the complainant was one. Mr. Beck was the case manager in the respondent's representation section. In that role, he had to analyze grievance files at the reference-to-adjudication stage and recommend whether the files should proceed according to several criteria, including the grievance's chances of success. Mr. Yoboua was a grievance and adjudication officer for the respondent. In that role, he was assigned classification and work-description grievances. He assessed the files and decided to proceed based on the grievances' chances of success. He provided representation or recommended that that task be assigned to outside counsel.

[56] Ms. Chapman testified that her involvement with the complainant began in 2018 with respect to a harassment grievance that he had filed. He wanted a third-level hearing as soon as possible. Ms. Chapman replied that she could not proceed quickly as she had multiple files and could not prepare properly on short notice. The complainant apparently then insisted on having a hearing in short order. Ms. Chapman then offered to accompany him but said that she would not be able to provide him representation "[translation] as such". She adduced in evidence an email exchange with the complainant that set out that they disagreed on how to proceed with the grievance.

[57] The employer denied the harassment grievance at the final level on December 5, 2018. After that, Ms. Chapman sent the grievance to the respondent for a referral to adjudication. Then, in March or April 2022, she was asked to participate in a meeting with the law firm representing the complainant. Ms. Chapman participated in

the meeting but stated that she did not participate in the respondent's subsequent decision to withdraw its support for the grievance referred to adjudication.

[58] The complainant filed a new work-description grievance on February 5, 2022. On February 8, 2022, he asked of Ms. Chapman that the grievance be referred directly to adjudication. She responded the same day that the grievance had to be presented at least at the final level before being referred to adjudication. The employer finally agreed to skip the first level but not the second. The second-level hearing was held on March 16, 2022, and the employer rendered its decision on April 11, 2022. In the response, it indicated that it would submit the work description dated January 31, 2018, to the classification group for assessment. On April 20, 2022, Ms. Chapman referred the grievance to the final level. She then asked the employer to suspend the time limits pending the classification review. Then, on April 26, 2022, Ms. Chapman asked the employer to schedule a final-level hearing.

[59] On May 4, 2022, Ms. Chapman asked the complainant whether he was available for a final-level hearing on May 17, 2022. He told her that he was available but that the hearing was completely useless. He wrote that he already knew the employer's response and that in any case, he was challenging the work description dated January 2018 that did not reflect the work that he was doing. He also reminded Ms. Chapman of the 20-day time limit to respond to a grievance at the final level. He informed her of the fact that he categorically refused Ms. Chapman granting the employer an extension. Ms. Chapman replied that she did not agree with his position and that there was a minimum of collaboration to offer the employer. The complainant expressed his disagreement with that position and reiterated the wording of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Technical Services group (expiry date June 21, 2018; "the collective agreement"). According to him, Ms. Chapman could not grant an extension without his consent, which he refused to give. He asked her to refer the grievance to adjudication by May 19, 2022. Ultimately, Ms. Chapman granted the employer an extension. The grievance hearing took place on May 26, 2022, and the employer rendered its response on June 23, 2022, dismissing the grievance.

[60] According to Ms. Chapman, the approval of an employee who files a grievance is not required to grant the employer extensions, particularly for a grievance about collective agreement interpretation. She testified that it is common practice for the

union to grant extensions at the final level. Sometimes, the union requests extensions from the employer for final-level hearing dates, and the employer agrees to the union's requests. Ms. Chapman testified that it is very rare for grievances at the final level to be heard within the time limits set out in the collective agreement. One party requests extensions, and the other grants them. Ms. Chapman also testified that generally, she does not seek authorization from the person who filed a grievance before granting a final-level extension.

[61] On February 23, 2022, Ms. Chapman attended a meeting of the employer and the complainant about his upcoming return to work. At the meeting, the employer informed the complainant that he would be assigned to a position at the EG-05 group and level with a clear work description. It was to be a position different from the one he occupied. According to Ms. Chapman, the complainant categorically refused to discuss the details of the new assignment as it did not address his work-description grievances and complaints. Ms. Chapman asked that the meeting end because she wanted to talk to the complainant alone. She then spoke with the complainant and suggested that he collaborate with the employer's offered accommodation.

[62] Ms. Chapman told the complainant that it would not be a good solution for him to retire and then file a grievance alleging that the retirement was a constructive dismissal. On March 4, 2022, in a lengthy email that was adduced in evidence, she explained to him her position and advised him not to do it, given the slim chances of success with such a grievance. She told him that the union would not support the grievance. She also suggested that he not resign.

[63] On March 29, 2022, Ms. Chapman wrote to Mr. Beck, to keep him informed of the developments in the complainant's file and to inform him that the complainant would resign as of March 30, 2022, and that he would file a constructive-dismissal grievance.

B. Mr. Beck's testimony

[64] Based on an analysis by an external law firm, Mr. Beck recommended to his supervisor that the respondent not represent the complainant's harassment grievance at adjudication.

[65] Mr. Beck explained that at times, the respondent entrusted external firms with the mandate to analyze grievance files. It was done with the complainant's harassment-grievance file as the respondent was short on staff. The firm's mandate was to consider the merits of the grievance and whether it was in the respondent's interest to proceed with the grievance.

[66] On April 11, 2022, the law firm wrote the following to the complainant:

> [Translation]
>
> …
>
> *We have now conducted a thorough review of all the documents you provided us at this time and notified the PSAC of your grievance's chances of success. Given your retirement, and after a detailed review of your file, the PSAC's opinion is that the chances are low that your grievance would be upheld. In addition, the vast majority of the remedies you seek in your grievance are now moot due to your retirement. With those facts in mind, the PSAC decided to discontinue representing the grievance. We will notify the FPSLREB and the opposing party that our mandate for this grievance has now ended.*
>
> …

[67] Mr. Beck testified that the Board does not have jurisdiction over personal harassment grievances. Even if the respondent proved that harassment took place, it would have to be proven that it was related to one of the discrimination factors mentioned in the collective agreement, which is not so in this case. More importantly, the remedy claims became moot given that the complainant retired in March 2022. Therefore, pursuing the grievance was not in the respondent's interest.

[68] Mr. Beck also testified that the law firm invoiced a significant number of hours for the complainant's file. That means that it took a long time to review the file and make its recommendation.

[69] Finally, Mr. Beck testified that he agreed with Ms. Chapman's analysis with respect to the complainant's forced-retirement grievance. He relied on that analysis to not proceed with the complainant's grievance.

C. Mr. Yoboua's testimony

[70] Mr. Yoboua was responsible for the respondent's representation of work-description grievances at adjudication and classification grievances at the level of the

committee that the employer formed. He reiterated that classification grievances cannot be referred to adjudication, as is so for work-description grievances. In the latter case, employees cannot proceed on their own and necessarily require the respondent's support. Mr. Yoboua decided on the respondent's behalf whether to support work-description grievances' referrals to adjudication.

[71] Mr. Yoboua testified that most of the time, the respondent does not go to adjudication with work-description grievances because their success rate is low. In effect, the changes that employees seek are already covered by the work description's existing wording.

[72] Mr. Yoboua explained that although the problems of inadequate work descriptions often date back several years, the case law of the Federal Court and the Board limit the remedy to the 25 days before the grievance was filed.

[73] Mr. Yoboua took care of the complainant's work-description grievance. He asked the complainant to provide him documentation to support the grievance. According to Mr. Yoboua, the complainant wanted much more than additions. Instead, it was a new job description.

[74] After several discussions with the complainant, Mr. Yoboua decided to refer the work-description grievance to adjudication. He notified the complainant by letter. However, he informed him that he would refer the grievance to adjudication only for the purpose of obtaining the employer's classification reports, as they could be useful as possible arguments about the position's classification. In his letter, Mr. Yoboua explained at length to the complainant the reasons for his position. He also explained the issue of the remedy limited to the 25 days before the grievance was filed. He reminded the complainant that he had been on sick leave during that period until he retired on March 30, 2022.

[75] Mr. Yoboua testified that he took a long time to analyze the complainant's file. He also testified that his intention was not at all to belittle the complainant's work. He said that he never said to him or wrote anything belittling. After reviewing the file, Mr. Yoboua did not believe that the complainant's work-description grievance would succeed. However, he felt that it was important to refer the grievance to adjudication, to obtain information that could be used later for a possible classification grievance.

[76] Mr. Yoboua testified that once the classification information was obtained, the biggest obstacle to proceeding to adjudication with the complainant's work-description grievance was the time limits issue.

[77] Especially in cross-examination, Mr. Yoboua testified about several other subjects related to the respondent's representation provided in the past or to different documents that one of the parties had adduced in evidence. I do not find it relevant to summarize those parts of his testimony as they did not relate directly to the complaints before me.

[78] During Mr. Yoboua's testimony, a question also arose about the fact that the complainant did not file his grievance earlier because he was on extended sick leave. According to the complainant, the respondent should have dealt with the file during his sick leave. Mr. Yoboua testified that it is primarily up to the employee to file an individual grievance and not up to the respondent to take the initiative. When Mr. Yoboua was cross-examined, Mr. Pothier testified that the respondent's local representatives apparently told him that an employee on sick leave cannot file grievances.

IV. Summary of the arguments

A. For the complainant

[79] The complainant returned to a 59-page document that summarizes and sets out the adduced evidence. He also produced a 15-page document that presents his argument. I will not repeat the contents of those documents. I will limit myself to summarizing the parts that deal directly with the four complaints before me and their contents.

[80] First, the complainant reiterated that harassment is a repeated and persistent attempt to torment, belittle, or frustrate a person or provoke a reaction from them. Each behaviour taken alone may seem inoffensive. The synergistic and repetitive nature of the behaviour causes its adverse effects. The complainant also reiterated that the abuse of authority was a person in authority's excessive use of a right.

[81] The complainant set out at length the evidence that proves that in his opinion, the work description and classification of his position did not reflect his duties. His

daily activities are not included in the EG classification standard but instead in the CS or EN-SUR standard.

[82] The complainant made a harassment complaint according to the employer's internal procedure. The investigator that the employer chose did not observe procedural fairness during the investigation. The complainant proceeded to a judicial review at the Federal Court for it to intervene. The respondent did not help him with that process.

[83] The complainant reiterated that for over 25 years, and through the respondent, he has tried, unsuccessfully, to obtain an adequate work description and classification. On reviewing all the submitted documents, it is clear that the complainant's geomatics tasks are CS or EN-SUR tasks and not EG tasks.

[84] Over the years, the employer has never complied with the signed agreements. It apparently never informed him in 2018 or later that it had officially assigned him a new work description, which created conflicts. All the employer's wrongful actions, taken together, constitute harassment.

[85] The respondent is complicit in all this because it did very little to help the complainant. It has done nothing to enforce the agreements that were signed and that the employer has not complied with; nor has it done anything to ensure that the employer complies with the classification standards and guidelines.

1. Complaint no. 561-02-44574

[86] In this complaint, the complainant alleged that the respondent breached its duty of fair representation by ceasing to represent his harassment grievance. According to the complainant, the employer failed to perform its duties throughout his career, and he was subjected to harassment. He linked his experience to the case law that he submitted.

[87] The respondent repeatedly asked the complainant during the hearings for his harassment grievance not to discuss his accusations against the respondent. It asked him to hide important events and not tell the truth, which the complainant refused to do.

[88] The complainant condemned the fact that a national representative of the respondent mentioned that it was frowned upon to defend a member "[translation … for which the outcome would cause the member to change unions". That proves that the respondent displayed bad faith in defending the complainant, who wanted an adequate work description.

2. Complaint no. 561-02-44808

[89] In this complaint, the complainant blamed the respondent for granting the employer excessive extensions to process his work-description grievance despite his refusal to grant extensions. That went against the collective agreement.

[90] Time limits may be extended if the employer and the employee and union representative mutually agree, in appropriate cases. The respondent failed to comply with that provision despite the complainant's insistence. He asked the respondent to process the grievance as quickly as possible and to go quickly to adjudication, given the employer's bad faith. It took the respondent six months to process the grievance at the second and third levels.

[91] The Board cannot ignore the different unfair and abusive practices that the respondent used for more than 25 years to obtain an adequate work description and classification that reflected the tasks that the complainant performed and that the employer requested.

3. Complaint no. 561-02-45552

[92] In this complaint, the complainant alleged that the respondent harassed him and that it was complicit in harassment for withdrawing its support for the work-description grievance. He alleged that the respondent's representatives belittled him and downplayed his work, failed to meet deadlines and uphold signed agreements, acted in bad faith, and displayed extreme negligence.

[93] The complainant reiterated some of the history of past work-description and classification disputes and breaches by the employer and the respondent. He also blamed Mr. Yoboua for doing the same as the employer by belittling and downplaying his work. In addition, Mr. Yoboua claimed that the grievance's chances of success were low, due to delays. However, the delays were due to negligence by the employer and the respondent.

[94] According to the complainant, the Board must consider facts that occurred before the deadlines when it deals with harassment complaints.

4. Complaint no. 561-02-47023

[95] This complaint is about the respondent's decision to withdraw its support for the complainant's work-description grievance after it received the classification reports from the employer of the complainant's last two work descriptions.

[96] The classification reports are incorrect and ignore much of the complainant's work and the knowledge required to carry out the work.

[97] Before the respondent decided to withdraw its support for the complainant's work-description grievance on grounds of timeliness, the complainant provided it with 10 reasons that the grievance had not been filed sooner. The reasons were due to the abuse, bad faith, and gross negligence of the employer and the respondent. The respondent focused solely on the 25-days issue and the fact that the complainant had retired. It ignored the fact that the complainant filed harassment and constructive-dismissal grievances and that since 2004, he never stopped pointing out that his work description and classification were inadequate.

[98] To support his position on the four complaints, the complainant referred me to the following decisions: *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 124; *D'Alessandro v. Public Service Alliance of Canada*, 2018 FPSLREB 90; *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70; *Nicol v. Treasury Board (Service Canada)*, 2014 PSLREB 3; *Taylor v. Public Service Alliance of Canada*, 2015 PSLREB 35; *Lessard-Gauvin v. Public Service Alliance of Canada*, 2022 FPSLREB 4; *Barrett v. Canadian Association of Professional Employees*, 2023 FPSLREB 66; *Lafrenière v. Canada (Director General Canadian Forces Grievance Authority)*, 2016 FC 767; *Pronovost v. Canada (Revenue Agency)*, 2017 FC 1169; *Forster v. Canada (Attorney General)*, 2006 FC 787; *Davidson v. Canada Post Corporation*, 2009 FC 715; *Murray v. Canada (Human Rights Commission)*, 2014 FC 139; *Public Service Alliance of Canada v. Canada (Attorney General)*, 2014 FC 1066; *Allard v. Canada (Canadian Food Inspection Agency)*, 2016 FC 1235; *Canada (Attorney General) v. Currie*, 2009 FC 1314; and *Boucher v. Canada (Attorney General)*, 2016 FC 546.

B. For the respondent

[99] The respondent reiterated the legal principles applicable to complaints about the duty of fair representation. First, the burden of proof lies with the complainant.

[100] The respondent's duty does not mean that it cannot make mistakes from time to time. The obligation is to represent in good faith and not in an arbitrary or discriminatory manner. The union is not responsible for taking the initiative to file grievances and has no obligation to follow up. In these files, the respondent took the time to review the complainant's grievances. Its representatives acted to the best of their knowledge and honestly, reasonably, and thoughtfully.

1. Complaint no. 561-02-44574

[101] The respondent withdrew the complainant's harassment grievance at adjudication after a serious and detailed consideration.

[102] The respondent believed that the Board did not have jurisdiction to hear the grievance. Furthermore, the remedy sought became moot as the complainant had retired. Therefore, the grievance's chances of success were very slim. The fact that the complainant refused to cooperate made his representation more difficult, but that is not why the respondent withdrew the complainant's grievance.

[103] The respondent advised the complainant not to retire and resign. After carefully analyzing the situation, it told him that it would not represent his "[translation] forced-retirement" grievance. According to the case law that the respondent consulted, such a grievance was unlikely to succeed. The respondent also provided the complainant with the details of its analysis. He did not follow its advice and decided to retire.

2. Complaint no. 561-02-44808

[104] The respondent did not breach its duty of fair representation by granting the employer extensions in the grievance process. The extensions that the respondent granted the employer were entirely reasonable. Ms. Chapman proceeded as quickly as possible, given the work to be done. She testified that the practice is to grant extensions and that generally, time limits are not met at the final level of the grievance process.

[105] According to Ms. Chapman, the respondent may grant extensions without consulting, or obtaining the consent of, the complainant. According to the respondent, this practice replaced the strict interpretation of the collective agreement. Furthermore, the complainant suffered no harm due to the fact that the respondent granted the employer extensions.

3. Complaint no. 561-02-45552

[106] In this complaint, the complainant claimed that the respondent and its representatives had harassed him. According to the respondent, the Board does not have jurisdiction to rule on such a matter, as it is an internal matter relating to the relationships between the respondent and the employees whom it represents. This issue is not related to the duty of fair representation.

[107] In any event, the adduced evidence does not establish that the respondent's representatives committed any harassment against the complainant.

4. Complaint no. 561-02-47023

[108] Mr. Yoboua decided not to refer the complainant's work-description grievance to adjudication after making a detailed review of the file. In so doing, he did not breach his duty of fair representation.

[109] The complainant accused the respondent of complicity with the employer. He submitted no evidence to support such an allegation.

[110] Mr. Yoboua is an expert on work-description and classification issues. He explained to the complainant in detail why the grievance was withdrawn from adjudication. His decision focused above all on issues of form, namely, the scope of the remedy sought being limited to the 25 days before the grievance was filed. Given the circumstances, the grievance became moot.

[111] In support of its position on the four complaints, the respondent referred me to the following decisions: *Lessard-Gauvin*; *Sherman v. Canada Customs and Revenue Agency*, 2004 PSSRB 125; *Pothier v. Public Service Alliance of Canada*, 2021 FPSLREB 139; *Tyler v. Public Service Alliance of Canada*, 2021 FPSLREB 107; *Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98; *Éthier v. Correctional Service of Canada*, 2010 PSLRB 7; *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 SCR 509; *Ouellet v. St-Georges*, 2009 PSLRB 107; *Bahniuk v. Public*

Service Alliance of Canada, 2007 PSLRB 13; *Shutiak v. Union of Tax Employees — Bannon*, 2008 PSLRB 103; and *Kowallsky v. Public Service Alliance of Canada*, 2007 PSLRB 30.

V. Analysis and reasons

[112] The complaints at issue in this case are based on s. 190(1)(g) of the *Act*, which refers to s. 185. Among the unfair labour practices that that section refers to, the unfair labour practice from s. 187 is the one of interest in these complaints. The provisions read as follows:

…	[…]
185 *In this Division,* **unfair labour practice** *means anything that is prohibited by subsection 186(1) or (2), section 187 or 188 or subsection 189(1).*	***185*** *Dans la présente section,* **pratiques déloyales** *s'entend de tout ce qui est interdit par les paragraphes 186(1) et (2), les articles 187 et 188 et le paragraphe 189(1).*
…	[…]
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.*
…	[…]
190 (1) *The Board must examine and inquire into any complaint made to it that*	***190 (1)*** *La Commission instruit toute plainte dont elle est saisie et selon laquelle :*
…	[…]
(g) *the employer, an employee organization or any person has committed an unfair labour practice within the meaning of section 185.*	***g)*** *l'employeur, l'organisation syndicale ou toute personne s'est livré à une pratique déloyale au sens de l'article 185.*
…	[…]

(2) *… a complaint under subsection (1) must be made to the Board not later than 90 days after the date on which the complainant knew, or in the Board's opinion ought to have known, of the action or circumstances giving rise to the complaint.*	***(2)*** […] *les plaintes prévues au paragraphe (1) doivent être présentées dans les quatre-vingt-dix jours qui suivent la date à laquelle le plaignant a eu — ou, selon la Commission, aurait dû avoir — connaissance des mesures ou des circonstances y ayant donné lieu.*
…	[…]

[Emphasis in the original]

[113] Much of the evidence that the complainant submitted refers to events that predate the 90-day time limit under s. 190(2) of the *Act* and go well beyond the allegations in the complaints. However, this evidence provides a better understanding of the context in which the complaints were made.

[114] Since 1997, the complainant has fought against all odds to obtain a work description that would reflect, in his perception of things, the tasks that he carried out. He never succeeded. *A priori*, based solely on the voluminous and detailed evidence that he adduced, I would be inclined to believe that he was, at least, partly right. However, it is not up to me to judge, especially since I would have had to hear the employer's version.

[115] Therefore, I can understand that he blames not only the employer but also the respondent for never being able to receive an adequate job description. My role is not to make a general judgment on the respondent's performance in relation to the factors that the complainant presented. Rather, my role is limited to determining whether the four complaints before me are well founded and, if so, to order the necessary corrective measures.

[116] Section 187 of the *Act* does not impose an obligation on an employee organization to represent all grievance files but rather prohibits it from acting in an arbitrary or discriminatory manner or in bad faith. The employee organization must exercise its discretion as to whether to represent a grievance in accordance with those guidelines. In *Canadian Merchant Service Guild*, the Supreme Court of Canada stated the following at page 527:

…

> *1. The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.*
>
> *2. When, as is true here and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.*
>
> *3. This discretion must be exercised in good faith, objectively and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of its consequences for the employee on the one hand and the legitimate interests of the union on the other.*
>
> *4. The union's decision must not be arbitrary, capricious, discriminatory or wrongful.*
>
> *5. The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence, and without hostility towards the employee.*
>
> …

[117] Therefore, to decide the merits of the four complaints, I must determine whether the respondent's decisions not to represent the complainant and to grant the employer extensions were made arbitrarily, discriminatorily, or in bad faith. The issue is not to determine whether the respondent's decisions were the correct ones.

A. Complaint no. 561-02-44574

[118] The evidence sets out that the respondent ceased representing the complainant's harassment grievance after the grievance was referred to adjudication. After that withdrawal of representation, the Board closed the file because the grievance related to the application or interpretation of the collective agreement.

[119] According to the evidence available to them, the respondent's representatives concluded that the grievance's chances of success were low and that the vast majority of the remedies that the complainant sought had become moot. They carefully reviewed the file before reaching that decision. Nothing was presented to me to prove that they did not carry out this review. Clearly, the complainant had arguments to continue with the grievance, but the respondent decided otherwise.

[120] In the same complaint, the complainant addressed issues that were already covered by his other complaints. He also stated that the respondent refused to

represent him at the TAT and the Federal Court. I will not deal with those issues in my decision as the parties did not really address them. The complainant also did not argue that the respondent had an obligation to represent him in those proceedings or that it supposedly breached its duty of fair representation by not doing so.

[121] Finally, the complainant argued in his complaint and at the hearing that he was forced to retire because the employer refused to accommodate him. From the start, the respondent refused to support the complainant's forced-retirement grievance. The respondent explained to the complainant in detail why it made its decision. Based on the facts and case law, the respondent concluded that the grievance's chances of success were low. The complainant, relying on *Nicol*, believed that he had good chances of success because the employer had refused to accommodate him. The complainant may be right, but the respondent is entitled to make mistakes. In any event, it is clear that the respondent did not make that decision lightly and that it fully justified it to the complainant.

[122] Therefore, based on what was presented to me, I have no evidence that could lead me to conclude that the respondent's decisions to withdraw its support for the harassment grievance at adjudication and not to support the complainant's constructive-dismissal grievance were made arbitrarily, discriminatorily, or in bad faith.

B. Complaint no. 561-02-44808

[123] This complaint is about the extensions that the respondent granted the employer for the final-level grievance hearing date.

[124] The parties agree on the fact that Ms. Chapman granted the employer an extension, despite the fact that the complainant expressly requested that she not grant one. According to the respondent, this is not a breach of the duty of fair representation. According to the respondent, it is the practice, and employees are rarely consulted. Furthermore, the deadlines are rarely met due to the lack of resources.

[125] The relevant collective agreement clauses read as follows:

… […]

18.16 *A grievor may present a grievance at each succeeding level in the grievance procedure beyond the first level either:*	***18.16*** *Un employé-e s'estimant lésé peut présenter un grief à chacun des paliers de la procédure de règlement des griefs qui suit le premier :*
a. where the decision or settlement is not satisfactory to the grievor, within ten (10) days after that decision or settlement has been conveyed in writing to the grievor by the Employer,	*a. lorsque la décision ou la solution ne lui donne pas satisfaction, dans les dix (10) jours qui suivent la date à laquelle la décision ou la solution lui a été communiquée par écrit par l'Employeur,*
or	*ou*
b. where the Employer has not conveyed a decision to the grievor within the time prescribed in clause 18.17, within fifteen (15) days after presentation by the grievor of the grievance at the previous level.	*b. lorsque l'Employeur ne lui a pas communiqué de décision au cours du délai prescrit dans le paragraphe 18.17, dans les quinze (15) jours qui suivent la présentation de son grief au palier précédent.*
18.17 *The Employer shall normally reply to a grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented, and within twenty (20) days where the grievance is presented at the final level except in the case of a policy grievance, to which the Employer shall normally respond within thirty (30) days. The Alliance shall normally reply to a policy grievance presented by the Employer within thirty (30) days.*	***18.17*** *À tous les paliers de la procédure de règlement des griefs sauf le dernier, l'Employeur répond normalement à un grief dans les dix (10) jours qui suivent la date de présentation du grief, et dans les vingt (20) jours si le grief est présenté au dernier palier, sauf s'il s'agit d'un grief de principe, auquel l'Employeur répond normalement dans les trente (30) jours. L'Alliance répond normalement à un grief de principe présenté par l'Employeur dans les trente (30) jours.*
…	[…]
18.22 *The time limits stipulated in this procedure may be extended by mutual agreement between the Employer and the grievor and, where appropriate the Alliance representative.*	***18.22*** *Les délais stipulés dans la présente procédure peuvent être prolongés par accord mutuel entre l'Employeur et l'employé-e s'estimant lésé et le représentant de l'Alliance dans les cas appropriés.*
…	[…]

[126] I understand well that the practice is not to meet the deadlines at the final level. The parties give each other time limits to meet their schedules and heavy workloads.

The union does not take the time to consult the employee, regardless of the collective agreement's wording, and the employer seldom responds to a grievance within the deadlines. Such is life. In this case, the collective agreement was not respected. According to Ms. Chapman's testimony, they seems to rarely be.

[127] Can it be concluded that the respondent acted arbitrarily, discriminatorily, or in bad faith?

[128] The evidence sets out that the respondent acts this way with all employees. Therefore, it did not discriminate against the complainant. Its decision was not arbitrary. It was thoughtful and responded to an established practice that leads the parties to act this way due to a lack of resources. Finally, nothing demonstrates that the respondent acted in bad faith by granting the employer an extension, even if the complainant did not agree.

[129] Based on what was presented to me, I have no evidence that would lead me to conclude that the respondent's decision to grant the employer an extension was made arbitrarily, discriminatorily, or in bad faith.

[130] As mentioned at paragraph 49, the complainant referred to a classification grievance that was filed after the 35-day time limit stated in the employer's policy. Apparently, it took 8 years for the employer to inform the complainant that his grievance had been denied because it was filed late. In the meantime, supposedly, the respondent did nothing. This allegation is outside the scope of the complaint. In addition, the events in question occurred well before the 90-day time limit set out in s. 190(2) of the *Act*.

C. Complaint no. 561-02-45552

[131] In this complaint, the complainant alleged that representatives of the respondent harassed him by repeatedly belittling and downplaying his work.

[132] Absolutely nothing in the adduced evidence supports this allegation. During the approximately 20 years of the dispute between the employer and the complainant, the respondent's representatives might not have always represented the complainant as he would have liked. No doubt, they might not have always agreed with the complainant's claims with respect to his work description and classification. That is not in any way equivalent to harassment.

[133] The complainant did not provide me with any specific example, incident, or speech from a respondent representative to support these harassment allegations. Furthermore, the evidence sets out that Mr. Yoboua took the time to analyze the complainant's file. In the analysis, he was always respectful to the complainant.

[134] Based on what was presented to me, I have no evidence that would lead me to conclude that the respondent's representatives harassed the complainant and acted arbitrarily, discriminatorily, or in bad faith.

[135] As mentioned at paragraph 52, the complainant referred to agreements in 2006 and 2014 that were not observed. I will not deal with these recriminations of his that date to events that occurred several years ago and exceed the 90-day time limit set out in the *Act*.

D. Complaint no. 561-02-47023

[136] In this complaint, the complainant alleged that the respondent breached its duty of fair representation by refusing to represent his work-description grievance.

[137] The facts are not in dispute. The respondent withdrew its support for the grievance after initially agreeing to refer it to adjudication. Initially, the respondent decided to refer the grievance to adjudication for the sole purpose of obtaining the employer's classification reports, and Mr. Yoboua so notified the complainant in August 2022.

[138] Mr. Yoboua also raised the time limits issue. The complainant's grievance was filed on February 5, 2022, against a 2018 work description. The employer then objected that the grievance was untimely. According to the case law, at best, an adjudicator would agree to impose corrective measures for the 25 days before the grievance was filed. However, the tasks claimed during that period were not performed as the complainant was on sick leave.

[139] Mr. Yoboua explained to the complainant the reasons for withdrawing the grievance from adjudication. His decision focused above all on issues of form, namely, the scope of the remedy sought to the 25 days before the grievance was filed. Given the circumstances, the grievance became moot as the complainant had retired. In addition, the employer had already provided the requested classification reports.

[140] The complainant made it clear that he did not agree with the respondent's decision. That decision did not have to be the correct one for the respondent to satisfy its duty of fair representation. However, it had to be thoughtful, and the respondent did think it through. Based on what was presented to me, I have no evidence that would lead me to conclude that the respondent's decision to withdraw its support for the work-description grievance was made arbitrarily, discriminatorily, or in bad faith. In addition, the respondent had no obligation to file a grievance on the complainant's behalf while he was on sick leave. That was up to the complainant or at least to ask the respondent to do it.

VI. Conclusion

[141] I have reviewed the case law that the complainant submitted.

[142] *Lafrenière*, *Pronovost*, *Forster*, *Davidson*, *Murray*, and *Robitaille* do not deal with complaints about the duty of fair representation. Rather, they involve employee-employer litigation. They raise interesting questions about procedural fairness, discrimination, and damage awards, but they are not helpful to deciding these complaints.

[143] *Nicol* deals with a situation that may be comparable to the complainant's, in that the employer breached its duty to accommodate after a return from sick leave. However, I must make it clear that my role is not to decide whether the complainant or respondent is in the right with respect to the complainant's "forced-retirement" grievance.

[144] In *Barrett*, the Board did not rule on the complaint but instead on the fact that there was an arguable case and that the complaint had to be heard. In other words, the Board ruled that the complaint could not be summarily dismissed. That decision is of no use in this case.

[145] In *Lessard-Gauvin*, the union committed serious negligence by failing to file the grievance that it was supposed to file. In *Taylor*, the Board also concluded that a breach of the duty of fair representation occurred as the union waited three years before informing the complainant that it would not represent her. The facts of those two complaints are completely different from those of this case.

[146] In *Ménard*, the Board determined that it had the authority to award remedies in a complaint that the duty of fair representation had been breached. The Board then set aside the union's decision to withdraw the grievance. In *D'Alessandro*, the Board awarded the complainant $2500 in damages as a remedy. In this case, I have not concluded that the duty of fair representation was breached. Therefore, I will not award any remedies.

[147] Based on the evidence before me and the Board's case law on the duty of fair representation, particularly in *Gagnon*, *Ouellet*, and *Kowallsky*, I find that the respondent did not breach its duty of fair representation.

[148] In each of the four complaints, the respondent acted thoughtfully and rationally. It justified its decisions. I did not have to determine whether the respondent's decisions were the correct ones but rather whether they were made in bad faith or in an arbitrary or discriminatory manner. However, nothing in the adduced evidence would lead me to conclude that the respondent made its decisions on such illegitimate grounds.

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

(The Order appears on the next page)

VII. Order

[150] The complaint in file no. 561-02-44574 is dismissed.

[151] The complaint in file no. 561-02-44808 is dismissed.

[152] The complaint in file no. 561-02-45552 is dismissed.

[153] The complaint in file no. 561-02-47023 is dismissed.

November 6, 2023.

FPSLREB Translation

Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board