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Files: 561-02-00743 and 00758

Citation: 2024 FPSLREB 37

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

SHARI-LYNN DUECK

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Dueck v. Public Service Alliance of Canada

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

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Marie-Pier Dupont, counsel

Decided on the basis of written submissions, filed September 16, 2015, and April 4, 2023.

REASONS FOR DECISION

I. Summary

[1] In 2015, Shari-Lynn Dueck ("the complainant"), then a civilian employee of the Royal Canadian Mounted Police, filed two complaints with the Public Service Labour Relations and Employment Board ("the former Board") under s. 190(1)(g) of what was then the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*), alleging that her bargaining agent, the Public Service Alliance of Canada ("the respondent"), failed its duty of fair representation (DFR) under s. 187 of the *PSLRA*. Her complaints relate to a series of unfortunate events in 2015 that occurred after she was on medical leave and during her ensuing, gradual return-to-work (RTW) period.

[2] After many attempts to schedule hearing days and related pre-hearing conferences, none of which the complainant was able to attend or participate in, the Federal Public Sector Labour Relations and Employment Board ("the Board") directed that the matter be heard by means of the quite lengthy written submissions on file from the complainant and the detailed reply provided by the respondent. Both parties were invited to provide any other written submissions that they wished. The respondent took advantage of this opportunity. The complainant did not provide either any further written submissions or a rebuttal to the respondent's submission.

[3] After a careful analysis of the entirety of the parties' submissions, I conclude that the complainant's highly detailed allegations and supporting commentary do not make out a violation of the respondent's DFR. The complaints are dismissed.

II. Process

[4] The Board's Registry undertook many communications with the parties, to attempt to schedule pre-hearing conferences either by phone or by videoconference. Hearings were scheduled three times for these complaints, including August 2021, July 2022, and finally February 2023. Pre-hearing conferences were scheduled in July 2021, May 2022, September 2022, and February 2023. For reasons that were not disclosed to the Board, it became apparent that the complainant was unable to participate in any of these events, and the Board advised the parties that it would proceed to dispose of the matters by written submissions. No objections to this were voiced by either party. For greater certainty, the complainant did not respond to the Board's request sent to her to provide a rebuttal to the respondent's submissions.

[5] These complaints arose from events in 2015. It would not serve the interests of justice for the parties or for others waiting for their files to be scheduled for a hearing before the Board to delay these two complaints indefinitely (see *Taticek v. President of the Canada Border Services Agency*, 2018 FPSLREB 44 at paras 42 and 43).

III. The complaints

A. The first complaint (Board file 561-02-743)

[6] This complaint was received on March 11, 2015, and in it, the complainant alleged that from January to February 2015, the respondent failed its duty related to her gradual RTW after medical leave. Filed were 22 pages of complaint and particulars forms, along with a highly detailed chronology of events and communications. The more substantive and relevant details of the allegations and particulars include these:

- The Royal Canadian Mounted Police ("the employer") changed part of the RTW plan by removing text about the complainant being allowed to attend medical appointments. This was discussed with a local union representative, and the employer was advised that doing so is not normally part of an RTW and accommodation plan.
- Pay-centre delays were being experienced, and a local union representative advised the complainant to work with the employer's pay-and-benefits staff to resolve things.
- Delays and the employer's failure with respect to an ergonomic assessment and accommodations caused the complainant to take more time away from work and to make many calls to the respondent for help with this and with her desire to file a grievance.
- There was concern that the employer forged RTW-related documents. She received very short notice to speak with a local union representative five minutes in advance of a meeting with the employer to discuss these issues, which the respondent was unable and unwilling to address.
- The employer was late paying the complainant for hours worked and missed its self-imposed deadline. The respondent should address the late-pay issue and the employer's fraudulent RTW papers and its lack of respect for privacy.
- Dozens and dozens of summaries of conversations with her local union representative were noted.
- A comment was made that the respondent had called the complainant difficult and unreasonable and that it refused to grieve her problems with the employer's failed accommodation.
- The complainant was forced to carry out her own research on duty-to-accommodate policies, and the respondent said that she is able to research well for someone with a brain injury.
- She has numerous emails from the local union representative stating that some of the concerns with the employer could not be grieved because they were not related to articles in the relevant collective agreement.
- She stated that the respondent pledged to represent her and help with her RTW issues and missing training-course records, that it helped her file a

> grievance on September 14, 2014, and that she finally received the outstanding pay owed to her in January 2015.

[7] In response to this complaint, in its written submissions, the respondent stated that in fact it filed grievances on the complainant's behalf about the RTW and accommodation process. When it replied to this complaint, it stated that these grievances were under negotiations with the employer for possible settlement.

[8] The respondent also noted the many communications and meetings between the complainant and its local representative and pointed out that the complainant documented dozens of such communications over a period of approximately two months. It submitted that while the replies might not have come quickly enough for her or were not what she wanted to hear, nevertheless, it was responsive in a reasonably timely manner and addressed every issue that she raised in a thoughtful and informed manner.

[9] Counsel for the respondent provided a written comment from the local union representative, Debbie Stangrecki, who during the times at issue provided representation to the complainant. She described attending many meetings with the employer to seek the resolution of the complainant's pay problems and recalled that that issue was resolved to the complainant's satisfaction. She also stated that contrary to the allegations, she never said that the employer did not have a duty to accommodate the complainant; nor did she ever say that such a grievance would not be pursued. She added that she recalled that several times, she sought advice from an accommodation specialist at the respondent's national head office, to help the complainant push the employer for proper accommodations. She also explained that she investigated the complainant's claims of harassment by the employer about her medical appointments and said that she recalled that at least three grievances were filed to help the complainant with her employer problems. She also provided comments and a document confirming her assistance pursuing an appeal of an insurance claim made with the Sun Life Assurance Company on the complainant's behalf.

[10] The respondent also stated that indeed, for many concerns, the first step is to attempt to resolve them directly with the employer before any thought is given to possibly filing a grievance. It suggested that doing so is often in the best interests of resolving issues promptly, and it supports better employer-employee relations in the

longer term. And finally, the respondent said that seeking to resolve concerns and to pursue grievances and their possible settlement by agreement fully discharges its DFR, as has been established through years of jurisprudence, which will be noted later in this decision.

B. The second complaint (Board file 561-02-758)

[11] This complaint was received on June 11, 2015, and in it, the complainant alleged that from late April to early June 2015, the respondent failed its duty to represent her. She also alleged that her employer harassed and failed to accommodate her. Filed were 16 pages of complaint and particulars forms, along with a highly detailed chronology of events and communications. The more substantive details of the allegations and particulars include these:

- The respondent filed a grievance on her behalf in April 2015.
- Problems persisted with her taking time off work for medical appointments and extended breaks not included in the collective agreement.
- She stated that since the previous complaint was made, she was "essentially" terminated from her employment.
- The respondent failed to represent her at the first level of the grievance process for a grievance that had been filed.
- The employer accused her of forging her doctor's notes.
- Her local union representative advised her that she had to wait 6.5 weeks after her grievance was presented at the first level before moving it to the second level.
- The respondent advised her that her supervisor's actions of falsely accusing her of criminal acts and intimidating her physician was not a union complaint despite that she felt harassed, threatened, and intimidated.
- "Despite [the respondent] signing this latest grievance", her local union representative said that she was unsure that that the complainant's supervisors were covered by the collective agreement and that she was unsure that she could help with it but that she would speak with the complainant again in 1 or 2 days about it. Then, 11 days passed, and she had no reason to believe that the respondent would help her.
- The respondent signed the grievance dated April 7.
- On April 8, an informal hearing was held to address a 2009 pay audit and the complainant's missing-pay claim. She discussed it with the union representative, who said that the employer was allowed to do what it did and that it could not be grieved. She continued to discuss this with her union representative until April 23.
- On April 15, her local union representative phoned to ask why she made a DFR complaint against the representative, who stated that if it were not withdrawn, a new representative would have to be assigned to her files but that the representative would help the complainant since the grievances had been filed, and discussions were about to take place.
- On April 22, an informal hearing was held about the current pay grievance.

- In April, the details of three different grievances were provided with respect to status.
- On May 11, the respondent presented grievances at the first level on harassment, discrimination, and the duty to accommodate but advised the complainant that it would not represent her on them any longer.
- The complainant was forced on leave without pay due to the employer's failure to accommodate her. She asked to use personal days, but the employer refused because it was a sick leave issue, and she stated that the respondent would not "help" her.
- The complainant stated this about Ms. Stangrecki: "… [she] advises me to drop 2009 to 2015 audit of hours because she cannot assist me … as this is not a collective agreement issue …".
- A grievance was filed about the pay issues.
- The complainant spoke with Ms. Stangrecki about the employer blocking her attempts to move to a new unit and new office and asked her for assistance. Ms. Stangrecki replied that it did not "truly fit" under the no-discrimination and no-harassment clauses of the collective agreement and stated that she was "not sure" that she could help.
- On May 6, problems arose with the supervisor not signing her timesheets, so she included Ms. Stangrecki on a phone call to be a witness to her manager's words. The complainant left her work later, phoned Ms. Stangrecki again, and advised Ms. Stangrecki that she could not have her timesheets signed.
- On May 7, her first-level hearing was set for May 11.
- The complainant had an appointment with a doctor before the hearing, but her manager demanded to know why she was leaving work. So, she cancelled the appointment and phoned Ms. Stangrecki, to advise her of the ongoing harassment.
- The respondent attended her first-level hearing but did not speak. At the end of the hearing, Ms. Stangrecki told her that the employer had no duty to accommodate her, "so there is nothing … more" that the respondent could do and that she "… should contact the Human Rights Commission if [she felt] wronged".
- The respondent informed her that she had to take vacation or family leave for her driving time to the hearing and her independent medical exam, "even though it is a day off". Ms. Stangrecki supported the employer's threats against her and stated that she would no longer be granted leave to attend the hearing and undergo the medical exam.
- On May 22, she typed "… another workplace grievance for the duty to accommodate …" and another harassment grievance.
- The first-level review was denied, but Ms. Stangrecki agreed with the complainant that it did not seem to address the issue.
- "I am concerned about the escalating of issues and lack of policy regarding duty to accommodate …". Ms. Stangrecki stated that she could not help the complainant with her issues about pay and hours worked, medical accommodation, or harassment and discrimination.
- On June 1, the complainant found out that her manager had gone to her medical office to demand having the doctor's signature verified as the employer thought that she had forged her medical notes. She advised the respondent, but it was unclear as to whether it was discrimination, harassment, or retaliation despite her employer's threat that it would file criminal charges against her.

- The respondent has called the complainant "difficult and unreasonable" and has repeatedly requested that she prove her innocence during harassment reviews.

[12] In response to this complaint, in its written submissions, the respondent stated that in fact, it filed two grievances on the complainant's behalf on May 27, 2015. It added that if a delay of a few days occurred communicating with her at the start of June 2015, it was due to the death of the local representative's spouse.

[13] The respondent also noted that it participated in the April 2015 audit of pay and benefits but that upon a review of the facts, the matter was discussed with the complainant, and it was explained that a grievance of it would be unlikely to proceed, and it was not taken any further.

[14] In response to the accusations that documents were forged and that the purchasing-card authority was exceeded, the respondent noted that it engaged the employer on those accusations and that it grieved them on May 27, 2015.

[15] It also stated that it investigated things and responded to the complainant and that it advised her that it believed that there was no recourse for her concerns over taking leave to attend appointments and a hearing.

IV. Analysis and reasons

[16] It is well established in law that the complainant has the burden of proof in this matter. In other words, the complainant was required to present evidence sufficient to establish that the respondent failed to meet its DFR (see *Ouellet v. St-Georges*, 2009 PSLRB 107 at para. 31). The bar for establishing such conduct is purposefully set quite high (see *Manella v. Treasury Board of Canada Secretariat*, 2010 PSLRB 128 at para. 38).

[17] The parameters of a bargaining agent's DFR were established by the Supreme Court of Canada (SCC) in *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509 at 527, in which it describes the principles underlying the DFR as follows:

> …
>
> *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.*
>
> …

[18] However, the right to decide how to proceed with a particular grievance is reserved to the bargaining agent. An employee does not have an absolute right to decide which grievances will be presented or will proceed to adjudication, provided that the bargaining agent's discretion is exercised in good faith, objectively and honestly, and after a thorough study of the case. The bargaining agent must take into account the significance of the issues raised with respect to the consequences for the employee on one hand and its legitimate interests on the other. In short, the bargaining agent's decision must not be arbitrary, discriminatory, or in bad faith (see *Canadian Merchant Service Guild*, at 510 and 511).

[19] The respondent correctly pointed out that unionized employees do not have an absolute right to representation. The former Board addressed this point in *Halfacree v. Public Service Alliance of Canada*, 2009 PSLRB 28, stating as follows:

> …
>
> *17 The respondent, as a bargaining agent, has the right to refuse to represent a member, and a complaint to the Board is not an appeal mechanism against such a refusal. The Board will not second-guess the bargaining agent's decision. The Board's role is to rule on the bargaining agent's decision-making process and not on the merits of its decision.…*
>
> …

[20] The complainant did not offer any submissions on the jurisprudence.

[21] Having carefully examined the submissions on file from both parties, I conclude that the complainant failed to establish that on a balance of probabilities, the respondent acted in a manner that was arbitrary, capricious, discriminatory, or wrongful.

[22] Rather, the submissions establish that the respondent exercised its discretion in good faith, objectively and honestly, and after a thorough study of the case. While the

complainant might not have been happy with all the outcomes of the respondent's advocacy or advice, I find that in all the instances cited by the parties, she was listened to, and that she received reasonably prompt and thoughtful replies to her many inquiries of the respondent. And finally, in her submissions, she admitted that in fact, the respondent grieved the matters that she had explained in some detail.

[23] For these reasons, I dismiss the two complaints.

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

(The Order appears on the next page)

V. Order

[25] The complaints are dismissed.

March 20, 2024.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board