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



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

BETWEEN

ALISON STRATTON

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Stratton v. Public Service Alliance of Canada

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

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Morgan Rowe and Claire Michela, counsel

Heard by videoconference,
August 1 to 3, October 13, and December 8, 2023.

REASONS FOR DECISION

I. Complaint before the Board

[1] Alison Stratton (“the complainant”) was wronged and was profoundly hurt by representatives of the Government Services Union (GSU), a component of her bargaining agent, the Public Service Alliance of Canada (PSAC). For the purposes of this decision, both the GSU and the PSAC are considered the respondent.

[2] It is understandable that she made this complaint. Unfortunately, the gist of her complaint lies in the past, much beyond the 90-day statutory limit imposed by s. 190 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”), under which this complaint was made. Because my authority is entirely derived from the Act, I cannot allow her complaint. I am constrained by timeliness and by the content of the duty of fair representation, as defined by s. 187 of the Act.

[3] In the reasons that follow, I explain why this is so. I wish to state how disheartening it is that a labour board such as the Federal Public Sector Labour Relations and Employment Board (“the Board”, which in this decision also refers to any of its predecessors) cannot always offer solace for wrongs committed in the workplace.

II. Summary of the evidence

[4] The complainant testified, and the respondent called two witnesses, David Girard, GSU Director of Representation and Labour Relations, and Martine Babcook, GSU Regional Vice-President. There were no contradictions as to the facts, but there were certainly differences in interpreting those same facts.

A. The complaint

[5] The complainant is employed as an accommodation management assistant (CR-04) at the Department of Public Works and Government Services, referred to by the parties as Public Services and Procurement Canada (PSPC or “the employer”). On February 25, 2021, she made a complaint with the Board. The introduction to the complaint reads as follows:

...

I wish to make a complaint about the treatment I have received from the union and some its members. In order to explain my complaint and put it into context I feel I need to refer to the

historical events which have led me here today. Please note the union and my employer share a working space and were located in the same office as me. Some of the unions members contributed to the harassment I received at work. It also pertinent to state her that I have learning disabilities as well as other mental ill health issues that both my employer and the union are aware of.

...

[Sic throughout]

[6] She details harassment that occurred in 2012, placing Ms. Babcook among her harassers. She denounces the harassment investigation as flawed. She states that the bullying continued.

[7] She recounts a 2013 grievance that was ultimately dismissed and blames Ms. Babcook for that failure. She states that her request for education leave and support in 2014 was denied, in part because the person who was supposed to help her was friends with Ms. Babcook and the local president.

[8] The complainant states that on her return to work in 2017, she did not receive the proper accommodation that was recommended by her doctor.

[9] The complainant then turns to Ms. Babcook's representation in 2020, stating, "... she has been persistently rude, aggressive, obstructive, and unhelpful." The complainant describes her situation as follows, with which Ms. Babcook allegedly provided little help:

...

As someone with a learning disability I require additional support than my teammates with advice, on following certain protocols and procedures and help with filling out forms or documents... Martine will also reject my grievances without even filing them at all, how can this be allowed?. She is pedantic and picky, and I believe she goes out of her way to be deliberately difficult.

...

[10] The complainant concludes by stating that had the respondent supported her properly from the beginning, she would not be in the difficult work situation that she is in today.

B. Events in 2012, the harassment investigation, and subsequent events

[11] In the summer of 2012, the GSU was made aware that its local representatives were participating in the ongoing bullying of the complainant. At one point, someone from the workplace wrote to the central GSU to denounce the situation.

[12] That person recounted in an email an incident in which in the complainant's absence, co-workers (including three executive members of the GSU local section) had rummaged through her things in her cubicle, making fun of her. The email ended with the following sentences:

...
People are commenting the [sic] Ali is "paranoid" that people are talking about her, but people are.

In a nutshell. Let me know if there's anything else. Like I mentioned, this has been going on for months.

...

[13] The GSU asked Ms. Babcook to follow up, which she did. In the course of her exchanges with the complainant, Ms. Babcook suggested mediation to try to solve the situation. A meeting was set up, but in the end, the complainant said that she could not go through with mediation.

[14] Ms. Babcook was extremely frustrated, as she had invested some energy to organize the mediation. When the complainant simply backed out, Ms. Babcook said something like, "I could punch you in the head." She apologized by email shortly after that, to which the complainant responded, "Ok that's ok...".

[15] The complainant made a harassment complaint against the local president. Seven incidents were listed. The investigator concluded that only one allegation was founded.

[16] I will recount one of the alleged incidents because it captures what was happening in the workplace at the time.

[17] Someone organized a joke with a coat rack — someone would hide among the coats and surprise the complainant when she picked hers up at the end of day. People laid in wait to watch her react — which she did, quite strongly. Everyone burst out

laughing. She tried to laugh too, to feel included. She was profoundly hurt, because she knew too well that the people were laughing at her, not with her.

[18] The harassment investigation focused only on the local president's actions. It was alleged that she was the ringleader behind the incident. The investigator concluded otherwise, stating that someone else had organized the prank, and consequently, the allegation was not founded. Moreover, the investigator added that the complainant's fright or embarrassment was somewhat mitigated by "... additional witness evidence from [two co-workers] who said [that the complainant] was happy to have had the joke played on her as she then felt part of the team."

[19] Ms. Babcook helped the complainant file a grievance to recoup the leave (vacation and sick leave credits) that she took during the time in which the alleged harassment incidents occurred. In 2013 and 2014, the complainant was assisted by Craig Spencer from the GSU's national office in her dealings with the employer. He assisted her at the final level of the grievance process. Ultimately, the employer denied the grievance, as it did not see a link between the leave taken and the one founded harassment allegation.

[20] From April 2015 to July 2017, the complainant was on medical leave. She returned to work on September 5, 2017. The return to work was a little difficult, and in September 2018, she agreed to undergo a fitness-to-work evaluation (FTWE). She was evaluated in April 2019, and the report was sent to her substantive manager in March 2020 ("the FTWE report"). In the meantime, the complainant obtained an acting position at the AS-01 level that she very much enjoyed. She felt much more welcomed in the new team.

[21] The FTWE report identified several work-related limitations. It was shared with both her managers (of her substantive and acting positions).

C. Events preceding the complaint

[22] The GSU again became involved with the complainant after the FTWE report was disclosed to her acting manager. She strongly disagreed with her report being shared and asserted that it led to the employer ending her acting appointment.

[23] For her representational needs, she was referred to Ms. Babcook, as she expressed some reluctance to deal with the local, despite a change in its members.

Ms. Babcook took it upon herself to ask management questions about the need for the FTWE and the report disclosure. The employer's position was that it was proper to share the FTWE report with those in the department managing the complainant, to ensure that she received a proper accommodation.

[24] Ms. Babcook and the complainant started to discuss filing a grievance. Ms. Babcook provided forms, but the complainant felt unsure how to fill them out. The tone of their email exchanges became rather sharp. On December 8, 2020, the complainant wrote this to Ms. Babcook:

I don't feel the union is representing me. I haven't heard anything back about the grievance.

If you don't want to proceed can you please put that in writing and the reason to why?

I have asked for help since I returned about accommodation dates back to few years now... Seems like since the union and management hid and covered up the first grievance of the harassment. Also that the union seems to represent the employer and not me....

I keep being ignored. This is not representation.

...

[Sic throughout]

[25] Ms. Babcook replied immediately as follows:

Really how about you fill in the grievance forms I sent you awhile back to get it going. I really don't appreciate you saying The Union is not helping you, you are not doing what is asked by the Union. If you feel you can represent yourself then go ahead. You do this everytime you reached out the the Union.

...

[Sic throughout]

[26] Ms. Babcook did help the complainant file a grievance related to the FTWE report being shared without her consent. The complainant also had other grievances that she wanted to file, but Ms. Babcook refused to file them.

[27] One such grievance was against Ms. Babcook. It raised the incident in which she stated that she wanted to punch the complainant. Another grievance was proposed against the past local president, who had been involved in harassment against the complainant eight years before. The complainant also wanted to grieve the employer's

lack of accommodation, but she did not articulate clearly what the grievance was or its time frame.

[28] The complainant left voice messages with the PSAC, complaining about her representation. At the same time, Ms. Babcook was still trying to help her with her work situation — the complainant continually stated that she was not being accommodated, but the accommodation requested was unclear. At the hearing, it came up again, and the complainant repeated several times that they (meaning the employer and the bargaining agent) had the FTWE report, so they should know, despite the fact that she had grieved it being shared.

[29] The evidence sets out an email exchange dated February 12, 2021, between the complainant and Ms. Babcook, discussing what should be brought forward at the first-level grievance hearing regarding the FTWE report.

[30] On February 16, 2021, Ms. Babcook emailed the complainant again about the accommodation grievance that the complainant was trying to file, which read in part as follows:

You have a sticker on there that says emailed January 25,2021 who did you email it to? Was it signed by a Union rep and returned to you? Is this the one I keep sending back to you to correct? You also signed it January 2017. Your grievance based on not being accommodated has to be within the time frame of the employer getting the accommodation request from a Dr, when was the accommodation requested and dated for. A couple other things you need to keep it mine, you can't just write names of people without backup of how they didn't accommodate you, it has to be current you named Randal, Randal is retired no longer with PSPC, can't file a grievance on someone who isn't employed....

...

[Emphasis in the original]

[Sic throughout]

[31] The complainant obtained a medical certificate stating that she was unable to work from January 20 to February 15, 2021, which was extended by a further certificate to February 22, 2021. She made her complaint against the respondent on February 25, 2021.

[32] In February 2021, the complainant also contacted the PSPC's Centre of Expertise on Values, Ethics and the Prevention of Harassment and Violence. It appears that Laura Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act

Lamontagne from that centre actively tried to help her. Ms. Lamontagne also contacted Ms. Babcook, to discuss the situation.

[33] The complainant submitted to Ms. Lamontagne the grievance that she wanted to file and that Ms. Babcook had refused to file. The grievance starts in 2011 and then details the 2012 harassment and investigation and the difficult following years. It is clear that work was always a struggle with interpersonal relationships and learning difficulties. Throughout, the complainant did not feel supported by her employer or the respondent.

[34] In her cross-examination of Ms. Babcook, the complainant very much insisted that Ms. Babcook knew of her learning disability, which Ms. Babcook denied. Ms. Babcook testified that she was aware of the FTWE report but that she has never seen its contents. She added that the complainant never explained her learning disability and the exact accommodation required for it.

D. Events following the complaint

[35] The exchanges with Ms. Lamontagne and the complainant clarified for the GSU that Ms. Babcook should no longer represent the complainant. Her case was assigned to another representative. At the hearing, I heard from Mr. Girard that efforts are continuing, to help the complainant with the situation she now finds herself in, with the employer pressuring for a clear return to work or retirement or, if neither option is chosen, termination.

[36] The respondent has advised the complainant that she should seek a one-year leave of absence, which would be granted under the relevant collective agreement and that would afford her some breathing space, to better consider future options. The complainant states that a six-month leave that her doctor requested was refused, so why would a one-year leave be granted? The respondent's answer is that the request would be made under the collective agreement.

[37] The evidence sets out that the new representative, Kelly Bush, has put a great deal of energy into understanding the complainant's situation. Still, the complainant has expressed dissatisfaction with the representation that she is being offered.

[38] In short, the complainant does not understand the processes — grievance, harassment investigation, timelines, the collective agreement, and so on. She expresses

her confusion, and in the responses from several GSU representatives, valiant efforts are made to explain things. Still, the dissatisfaction remains.

III. Summary of the arguments

A. For the complainant

[39] The complainant presented her closing argument in writing.

[40] The complainant submits that the respondent has not been honest or fair in its representation and that it has hindered her ability to file grievances, despite its awareness of her problems.

[41] The complainant details her problems with her employer (sharing the FTWE report, not extending her acting appointment, and the insufficient accommodation). She then states that Ms. Babcook did not help her file any accommodation grievances.

[42] She blames the respondent for not disciplining Ms. Babcook for her unfair treatment of the complainant and blames Ms. Babcook for not explaining processes correctly.

[43] In her submissions, she refers to past events — the botched 2013 harassment investigation, the harassment that she has been subjected to throughout her time with the employer, and the lack of accommodation with her return to work in 2017.

[44] She refers to events that occurred after the complaint was made (receiving help from a new representative to file an accommodation grievance) and further employer actions. She submits that the respondent is not helping her deal with her current crisis and that it is imposing deadlines to respond, without guiding her.

[45] She also refers to the fact that the respondent does not seem to recognize that she needs support and that it is not helping her with her accommodations.

[46] She deplores the fact that she has the onus to provide all documents and information. She made a great number of ATIP (access to information and privacy) requests and was overwhelmed by the information she received. No one helped her sort through it.

[47] In her submissions, the complainant expresses her continuing confusion about grievances — why the respondent would make a complaint instead of filing a

grievance, and why her grievances were not filed. Ms. Babcook was not helping her; she did not want to work with Ms. Babcook, yet she was continually referred back to her. It seems that the respondent was helping Ms. Babcook, not the complainant.

[48] The complainant raises some doubts about Ms. Babcook's credibility as a witness. She asserts that Ms. Babcook in fact lied when she said that she was unaware of the complainant's disabilities and accommodation needs. She also states that Ms. Babcook misrepresented whether the person who first got in touch with the GSU about the office incidents in 2012 was or was not a member of the GSU local at that time. Ms. Babcook said that she was not; in her submissions, the complainant asserts that she was.

[49] In her submissions, the complainant states that in fact, she wanted to file a grievance against Ms. Babcook, and that she still does not understand why that is not possible. She blames the respondent for not explaining things sufficiently and for not supporting her in her grievance against Ms. Babcook. She finds it suspicious that the respondent will not support filing a grievance against Ms. Babcook.

[50] I think that the following passage from the complainant's submissions deserves to be quoted as it summarizes the position that she took before me throughout the hearing:

...

Despite union members being aware of my disabilities, including difficulties understanding, processing and memorizing as stated in the HC report there was not attempt to ensure I understood my rights or the timelines involved and things were deliberately drawn, I can see clearly now, to ensure that I would miss them anyway. I've received no support to enable me to prepare, gather or present my case. Even the Respondents lawyers have made several references indicating the have clearly acknowledged I don't full understand the process, Such as when they stated I sent a bunch of information that didn't apply to the DFR [duty of fair representation]. Whilst I appreciate the deadlines have been granted there's still little to no regard for the impact of this process on my disabilities and mental health and I cannot sustain living this way.

...

[Sic throughout]

[51] The complainant cited some case law to support her case. In my analysis, I will return to the case law that I consider relevant.

[52] She submits that several people from the respondent claimed to help her but did not seem to communicate, which might have caused delays. They were all aware of her situation, but still, she was not represented fairly.

[53] The complainant considers it unfair that both the employer and the respondent expected responses from her when she was in a severely depressed state.

[54] She repeats many times that Ms. Babcook should have been aware of her limitations and accommodation needs because of the FTWE report.

[55] The complainant alleges that the respondent exhibited discriminatory behaviour because other complaints or grievances were dealt with more quickly than were hers.

B. For the respondent

[56] In short, the complainant is dissatisfied with the representation she received from the respondent. That is not the standard to apply to determine whether the respondent breached its duty of fair representation.

[57] There is a great deal of dissatisfaction that is linked to past events, starting with events in 2012 and the harassment investigation. A number of workplace difficulties were raised, including bad relationships and unsatisfactory accommodation.

[58] These events and circumstances serve as a context to better understand the complaint. They cannot be part of the complaint, given the mandatory 90-day period to make a complaint under s. 190 of the *Act*. That time cannot be extended, contrary to the possibility to extend deadlines for a grievance.

[59] Therefore, the Board must consider, for the purpose of deciding the complaint, what happened from late November 2020 to the date on which the complaint was made, which was February 25, 2021.

[60] The duty of fair representation is defined in s. 187 of the *Act* — the bargaining agent must not “... act in a manner that is arbitrary or discriminatory or that is in bad faith ...” in representing any member of the bargaining unit.

[61] It has been further defined by the jurisprudence, and the respondent cited several cases to support its argument. I will return to the relevant cases in my analysis.

[62] Representation cannot be held to a standard of perfection. Since 2020, the respondent has endeavoured to assist the complainant by taking reasonable steps. It recognizes that harassment occurred in 2012 and that members of the GSU local were involved. Ms. Babcook acknowledged that her comment, born of frustration, was wrong. She thought that it had been addressed in an email exchange that occurred shortly after it was made.

[63] In April 2020, when the complainant called the GSU for help and said that she did not want to deal with the GSU local, she was referred to the regional vice-president, Ms. Babcook. At that time, the complainant said nothing about not wanting to deal with Ms. Babcook.

[64] Ms. Babcook sought to assist the complainant with her issue with the FTWE report, which was that it was shared allegedly without her consent. She spoke with management and tried to help the complainant formulate a grievance. She also tried to steer her forward rather than focusing on past events that could no longer be grieved or complained of. Ms. Babcook sought answers, to try to identify what exactly had to change in the complainant's work environment; she testified that she never received straight answers.

[65] She continued to try to help. Numerous emails exchanges set out that she tried to help the complainant formulate grievances that could have a chance of success. Despite the complainant repeatedly asking for accommodation, Ms. Babcook never received the details of the required accommodation. The complainant never explicitly set out which recommendations in the FTWE report were not being followed.

[66] Once the complaint was made, it became clear to the respondent that the complainant could not deal with Ms. Babcook. Steps were taken to find other representation for the complainant.

[67] In all its actions preceding the complaint, there was no bad faith, arbitrariness, or discrimination. The respondent did its best to try to meet the complainant's needs. Communication was difficult.

IV. Analysis

[68] I will state from the start that it is unusual to take into account events that occur after a complaint was made, as generally, they are considered irrelevant to the complaint. I make an exception in this case by considering the respondent's actions once the complaint was made because I believe its actions shed light on its difficulty dealing with the complainant.

[69] To put it bluntly, the complainant was unclear in her communications with the respondent. It would certainly have been preferable, in 2020, had someone other than Ms. Babcook dealt with the complainant. I believe the complainant who testified that she was intimidated by Ms. Babcook and that she was incapable of trusting her. But I believe the respondent that until the complaint was made, the unease was never clearly articulated. The complainant left messages that to her seemed clear but that objectively did not explain why she did not want to deal with Ms. Babcook.

[70] The continuing exchanges with the respondent after the complaint was made reflect its efforts and the complainant's disarray. She is offered solutions and has difficulty understanding why those solutions may help her.

[71] The respondent argues two grounds to respond to the complaint, which I will address in turn: timeliness, and the content of the duty of fair representation.

A. Timeliness

[72] The respondent does not argue that the whole of the complaint is out of time but that a great deal of the complaint has to do with history.

[73] I concur. I believe that a large part of the complaint before me has to do with past conflicts that were never resolved to the complainant's satisfaction.

[74] Unfortunately, the text of the legislation is clear. Section 190(2) reads as follows:

190 (2) Subject to subsections (3) and (4), 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

190 (2) Sous réserve des paragraphes (3) et (4), 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

or circumstances giving rise to the complaint. — *connaissance des mesures ou des circonstances y ayant donné lieu.*

[75] The complainant argued that since she was not aware of the time limitations, she should not be held to them. However, the text is clear. It is a matter of being aware of the circumstances that gave rise to the complaint.

[76] Moreover, this complaint is not a way to pursue a harassment complaint against people who were not present at the hearing. Unfortunately, the harassment of years ago was investigated. That subject is closed.

[77] This complaint is not a means to claim faulty accommodation by the employer and the respondent's alleged lack of support in years gone by. The terms of the legislation are clear — it is not past actions that matter but the actions in the 90 days before the complaint was made.

[78] The complainant also argued that an extension of time should be considered, as when deadlines are missed for grievances and a party applies to the Board for an extension. That possibility exists for grievances, but it is not the same for complaints under s. 190. Although parties are always expected to respect deadlines, there is no imperative language in the *Act* for grievances, contrary to the section dealing with complaints. Rather, for grievances, the Board sets deadlines through its *Federal Public Sector Labour Relations Regulations* (SOR/2005-79), s. 61 of which allows for extending time for them.

B. Duty of fair representation

[79] It is clear from the complaint and the complainant's testimony and closing arguments that the respondent's recent actions (within the 90 days before the complaint was made) are but a small part of her overarching issues with both it and the employer. It started in 2012 with the bullying, in which some GSU local members participated; it continued with difficulties in the workplace, with colleagues, with her work duties, and with the employer that were not dealt with to her satisfaction. Throughout all this, the complainant suffered from major mental health problems, according to her testimony. I have no wish to minimize her suffering. But as a panel of the Board, my authority to decide complaints is limited by the legislation.

[80] In some of her arguments, which I have not reproduced, the complainant seeks to invoke sections of the *Act* other than s. 187, which do not apply to this case.

[81] My task is to determine whether the respondent breached its duty of fair representation, as defined by the legislation and the case law. For ease of reference, s. 187 of the *Act* reads as follows:

187 No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.

187 Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.

[82] The duty of fair representation was first defined in *Canadian Merchant Service Guild v. Gagnon*, [1984] 1 S.C.R. 509, which both parties cited. I do not think it is necessary to repeat the oft-cited quote, since the principles are well developed and summarized by s. 187 of the *Act*, which was enacted after that decision was rendered.

[83] The Board has had many opportunities to apply s. 187 to different fact situations, each time adding a little more precision to the duty of fair representation — what is expected of a bargaining agent in carrying out this duty, and what cannot be required realistically.

[84] In *Ouellet v. St-Georges*, 2009 PSLRB 107, the Board stated that its role is not to examine the bargaining agent's decision whether to file a grievance or to refer it to adjudication; rather, the Board should evaluate how a grievance was handled. Moreover, the grievor has to cooperate in the effort, notably by providing timely information.

[85] In *Langlois v. Public Service Alliance of Canada*, 2011 PSLRB 121, and many other decisions, the Board has affirmed that a bargaining agent has no obligation to pursue a grievance. Its obligation is to consider the matter seriously, without bias or hostility. That does not mean adopting the grievor's point of view.

[86] *Cox v. Vezina*, 2007 PSLRB 100, presents some similarity to the complainant's case. In that case too, a complainant felt that her concerns were largely ignored, and the representative essentially did not care about her situation. In fact, in that case, the Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act

evidence demonstrated that the representative indeed acted to the best of his abilities to respond to that complainant's demands. The bargaining agent cannot be held to a standard of perfection. A shortfall in communication is not a sign of arbitrary, discriminatory, or bad-faith behaviour.

[87] Miscommunication as such is not a sign of arbitrary behaviour by the bargaining agent. The complainant in *Andrews v. Public Service Alliance of Canada*, 2021 FPSLRB 141, had left a message that she believed was clear; the bargaining agent did not act on what she considered directions to file a grievance. The Board concluded that the bargaining agent could not be blamed for not understanding an unclear message.

[88] In *Manella v. Public Service Alliance of Canada*, 2022 FPSLRB 7, the Board found that the bargaining agent had not turned its mind seriously to the merits of that complainant's grievance. There was a real issue, and the bargaining agent had not followed through to engage the employer to resolve it.

[89] In *Lessard-Gauvin v. Public Service Alliance of Canada*, 2022 FPSLRB 4, the Board concluded that the bargaining agent had been negligent by not filing a grievance on time. The grievor in that case had completed the form, and it was clear and ready to be sent, but somehow, it was not sent on time. The employer dismissed the grievance due to untimeliness.

[90] In *Ménard v. Public Service Alliance of Canada*, 2010 PSLRB 95, the bargaining agent filed a grievance on behalf of Ms. Ménard concerning the disharmonious workplace and asking for compensation. Ms. Ménard left her position for another position in the public service, and the bargaining agent simply closed her file as it no longer saw the utility of her grievance. Ms. Ménard protested, but the bargaining agent maintained its position.

[91] The Board found that the bargaining agent had not seriously considered the file but rather had closed it without providing any rational explanation. It concluded that the bargaining agent had acted arbitrarily.

[92] The complainant relied on *Ménard* and *Manella* to argue that in her case too, the respondent acted arbitrarily by not taking her cause seriously. One authority that is often cited to explain arbitrary conduct in the context of union representation is the

Supreme Court of Canada's decision in *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39, from which is drawn the following extract, found at paragraph 50:

50 The concepts of arbitrary conduct and serious negligence, which are closely related, refer to the quality of the union representation. The inclusion of arbitrary conduct means that even where there is no intent to harm, the union may not process an employee's complaint in a superficial or careless manner. It must investigate the complaint, review the relevant facts or seek whatever advice may be necessary; however, the employee is not entitled to the most thorough investigation possible. The association's resources, as well as the interests of the unit as a whole, should also be taken into account. The association thus has considerable discretion as to the type and extent of the efforts it will undertake in a specific case....

[93] I cannot find that the respondent's actions were arbitrary. Ms. Babcook tried to obtain information, to determine what accommodation was missing, and tried to have the complainant write a grievance that would correspond to the grievance form.

[94] Ms. Babcook requested from the complainant what she needed in terms of accommodation. The complainant argued that Ms. Babcook should have inquired; in fact, she did. The complainant never clearly answered.

[95] The complainant submitted that it was bad faith on the part of the respondent not to file the grievances she wished to file, notably against the actions of Ms. Babcook and other union representatives.

[96] Grievances are meant to deal with the actions of the employer, not the bargaining agent. Within the parameters set by the *Act*, an employee can complain to the Board concerning the actions of the bargaining agent or its agents, as the complainant has done in this case. This has nothing to do with the employment relationship, and therefore cannot be a grievance.

[97] I cannot find bad faith in the respondent's actions. In *Sganos v. Association of Canadian Financial Officers*, 2022 FPSLR 30, the Board indicated that bad faith involves a form of personal hostility toward a complainant or behaviour on the part of a bargaining agent that was oppressive, dishonest, malicious, or spiteful. The relationship with Ms. Babcook was marked by fear on the part of the complainant, but because of her subjective perception of the situation, not Ms. Babcook's objective behaviour.

[98] Nor can I find discrimination. The complainant was treated as would have been any other member of the bargaining unit — she was expected to provide the information with which the respondent would be able to help her. She claims that she was discriminated against because other bargaining unit members' matters were dealt with more quickly than hers. With all due respect, this can be explained by the lack of clarity in communication, that made processes slower.

[99] The issue is that the complainant's expectations and needs far exceed what a bargaining agent can offer. I find it telling that she reproaches the respondent for not helping her with this complaint. There is an insurmountable lack of understanding. I do not believe that a bargaining agent is equipped to deal with such a situation.

[100] Ms. Babcook is no doubt a committed member of the GSU, and she takes her role seriously. She advocated for the complainant several times.

[101] Unfortunately, she may not be the most patient person, and she was ill suited to answer the complainant's needs; the complainant requires listening skills and detailed explanations. However, the duty of fair representation does not extend to matching personalities so that everything will go smoothly. There is some responsibility on the member too, to cooperate and express clearly his or her needs.

[102] In her submissions, the complainant brings up issues with Ms. Babcook's credibility; for example, Ms. Babcook stated that someone was not part of the GSU local executive at a certain time when, according to the complainant, she was. Although the complainant noted it, it was not raised in cross-examination. Therefore, Ms. Babcook did not have the opportunity to either correct herself or indicate the years in which that person was indeed part of the GSU local. I do not believe that making a mistake about events going back 11 years made Ms. Babcook a less-credible witness.

[103] I believe Ms. Babcook when she states that she did not know the content of the FTWE report, the complainant's disabilities, and the necessary accommodations. The complainant had the onus to make her needs clearer. The FTWE report was addressed to the employer, not to the respondent.

[104] At the hearing, the complainant worked hard to tell her story and to make her plight known. However, from the written exchanges that I saw, and from all the witnesses' testimonies, including the complainant's, I conclude that she has great

difficulty explaining what she needs. She also has difficulty letting go of what happened in the past. For example, starting in April 2020, her work was entirely remote. Yet, she kept speaking of a toxic workplace. One is left to wonder what that means in the context of telework. Were the work demands excessive? Did she receive unwelcome correspondence? Was her home office not suitable? In all the exchanges, it is never explained, despite the fact that both the employer and the respondent ask her repeatedly to specify what accommodations are needed.

[105] In the same way, it took this complaint for the respondent to realize that the complainant really did not want to deal with Ms. Babcook. She believes that she stated as much, but frankly, the messages she sent or left by voicemail did not express her reluctance to work with Ms. Babcook, just her dissatisfaction with the representation she was receiving.

[106] I must say that this case raises a very thorny issue — to what point must a bargaining agent go out of its way to accommodate a particular individual who cannot clearly articulate what she needs? Once the respondent understood that Ms. Babcook was not the right person, it took immediate action to replace her.

[107] I cannot find that the respondent failed its duty of fair representation.

C. Comments

[108] Several times during the hearing, and in her submissions, the complainant insisted as to how difficult this process was for her mental health. At least twice, I encouraged her to discuss with the respondent about a possible settlement, since it had demonstrated its willingness to continue representing her and has in fact continued to. I explained that in the context of this complaint, even if I were to find that the respondent violated its duty of fair representation, there was not much more I could order the respondent to do. The complainant refused.

[109] There may be many reasons why she wished to continue an obviously painful process. I would be remiss not to note the dismal failure that was the harassment investigation all those years ago. The hurt of that period's bullying has remained with the complainant ever since. At that time, both the respondent and the employer failed to protect a vulnerable person.

[110] However, it is not helpful to the complainant to continue to pursue past wrongs.

[111] I said it at the start, and I will repeat it. It is unfortunate that the Board cannot fix every broken situation. I wish the complainant well, and I do hope that she will be able to accept the help that the respondent continues to offer her.

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

(The Order appears on the next page)

V. Order

[113] The complaint is dismissed.

April 12, 2024.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**