Date: 20240730

File: 561-02-43130

Citation: 2024 FPSLREB 100

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

JEFFREY REID

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Reid v. Public Service Alliance of Canada

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

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

For the Complainant: Himself

For the Respondent: Kourosh Farrokhzad, representative, and Emilie Taman, counsel

Decided on the basis of written submissions, filed July 16 and August 4, 2021, December 27, 2023, and January 19, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] Jeffrey Reid ("the complainant") was a public servant for two decades before he joined Library and Archives Canada ("the employer") from 1997 to 2010. The Public Service Alliance of Canada ("the respondent") was, at all material times, the certified bargaining agent for the bargaining unit covering the complainant's position.

[2] On June 16, 2021, the complainant made this complaint under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), in which he alleges that the respondent failed its duty of fair representation, set out at s. 187. Precisely, he alleges that for 20 years, the respondent was absent and not objective or rational and that it did not consider the merits of his grievances. He also alleges that it did not respect the terms and conditions of an agreement that they signed in 2014.

[3] The respondent denies those allegations and requests that the Federal Public Sector Labour Relations and Employment Board ("the Board") summarily dismiss this complaint without holding an oral hearing, as it is untimely or does not demonstrate the existence of an arguable case that the respondent breached s. 187 of the *Act*.

[4] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) allows the Board to decide any matter before it without holding an oral hearing (see *Walcott v. Public Service Alliance of Canada*, 2024 FCA 68 at para. 4). Since the parties had the opportunity to file additional submissions, I am satisfied that it is possible to decide the respondent's preliminary request on the basis of the documents on file as well as the parties' written submissions.

[5] For the following reasons, I conclude that the complaint should be dismissed, as it is untimely.

II. Summary of the facts

[6] Starting in 1998, the complainant began to experience difficulties in the workplace. He raised many issues with the employer over the years and took some steps to address them until his employment was terminated in 2010. He is allegedly affected by multiple medical conditions that were present and that evolved from those years until today.

[7] Sometime after the complainant's termination, the respondent filed a grievance on his behalf and provided support and representation for it. In 2011, he made a first complaint alleging that the respondent had breached its duty of fair representation. Ultimately, the complaint was settled after mediation, and the parties signed a memorandum of agreement on October 6, 2014 ("the 2014 agreement").

[8] After the agreement was signed, the respondent provided representation to the complainant with respect to his several grievances. It eventually retained external counsel to provide legal services to him with respect to matters related to the termination of his employment. His termination grievance was referred to adjudication in 2017 but was settled before the hearing started. A settlement agreement was signed with the employer on November 24, 2017 ("the 2017 agreement").

[9] In early 2018, the complainant contacted the Board and claimed that he did not have capacity when the 2017 agreement was signed. A hearing to determine if the 2017 agreement should be set aside was initially scheduled in 2018 but was postponed a few times until June 2021. In the meantime, in July 2019, the respondent decided that it would no longer represent him. He and the Board were so advised.

[10] The hearing scheduled before the Board for June 16, 2021 ("the June 2021 hearing") proceeded, and a decision was rendered on September 14, 2021. The motion to set aside the 2017 agreement was dismissed. The complainant did not attend the hearing but made this complaint against the respondent. The complaint was signed on June 11, 2021, and it was submitted to the Board on June 16, 2021.

[11] After he made this complaint, the complainant made a vast disclosure request, which he reiterated a few times in his different exchanges with the Board. The disclosure request sought that the respondent disclose all communications of any kind from or to anyone about him going back to August 1997. So far, the Board has considered that request premature, as the complainant was so advised by email on July 7, 2021.

III. Summary of the arguments

A. For the respondent

[12] As a preliminary argument, the respondent takes the position that the complaint is untimely. It submits that s. 190(2) of the *Act* provides that a complaint

must be made with the Board not later than 90 days after the date on which the complainant knew or ought to have known of the action giving rise to it.

[13] It submits that the general allegations in this complaint stretch back to 2014 and that its last communication with the complainant was in 2019. That was far outside the statutory limit set out by s. 190(2). Therefore, the complaint would be untimely.

[14] In the initial complaint documentation, the complainant specifies that the date on which he knew of the respondent's act, omission, or other matter that gave rise to it was June 11, 2021. However, it does not provide any particulars of any kind of action or event that the respondent carried out on that date. The respondent submits that the last decision it made with respect to the complainant's matter was in July 2019, when it decided to withdraw its representation.

[15] The respondent also suggests that s. 209(2) of the *Act* gives a bargaining agent the exclusive power to represent its members in a grievance involving the interpretation or application of a collective agreement. The jurisprudence recognizes that in that context, the bargaining agent has broad discretion when deciding whether to represent one of its members, none of whom have an absolute right to adjudication.

[16] The respondent submits that it has consistently taken the complainant's concerns seriously and that it has provided every kind of support to him that it could possibly muster. Its external counsel consistently undertook to protect his rights and to represent him.

[17] The decision to cease its representation services was not made lightly and was not arbitrary, discriminatory, or in bad faith. Anyway, an allegation to the contrary would be untimely, as the decision was made and communicated to the complainant almost two years before he made the complaint to the Board.

B. For the complainant

[18] The complainant filed a 100-page document as his written submission. It contains repetitive narration of work-related histories stretching back to 1998, as well as some excerpts of emails or communications that he had with the respondent or the Board between 2018 and 2021.

[19] Specifically about the respondent, the complainant explains multiple times that during his preparation for the June 2021 hearing before the Board, his review of the file and of the documents revealed to him the respondent's lack of will, on every level, to address any of his issues, going back as far as the early stages of his employment in 1998.

[20] The date on which he would have come to this understanding was June 11, 2021. That so-called "new information" or revelation necessitated that he makes this complaint under s. 190 of the *Act*. He further submits that only then, in 2021, did he realize that up to that day, all the respondent's efforts were made with the goal of avoiding addressing his issues, and that he has been lied to. It is also clear to him that the respondent did nothing to fulfill its obligations under the 2014 agreement.

[21] The complainant states that he wants the respondent and the employer to work with the Board "in the discovery of the disclosure" to prove that he is wrong. He also mentions that he is confident that "the discovery of the disclosure" will prove that the respondent and the employer have colluded in how they have treated him since 1998.

[22] The complainant submits that the respondent's discretion was not exercised honestly, objectively, genuinely, or in good faith but rather that it was arbitrary, capricious, wrong, hostile, incompetent, discriminatory, and harassing and done with major negligence. He suggests later in his submissions that it was, rather, "on or about March 2021 to June 2021" that he discovered the truth about the respondent's lack of representation.

[23] Finally, the complainant submits that he "chose to go to the Board with another form 16" because he believes that there are other avenues of settlement, such as mediation. He has faith that with goodwill from both parties, he could settle "the issues that are all remaining unaddressed since 1998".

C. The respondent's rebuttal

[24] The respondent submits that most of the complainant's submissions relate to allegations dating back to 1998 that are about his treatment in the workplace, rather than providing particulars of his complaint.

[25] It also submits that the complainant cannot raise issues related to its representation of him before the 2014 agreement, as he is estopped from doing that

and because those allegations would be untimely, no matter what. As for any allegations about issues after the 2014 agreement, he did not establish any factual basis for a claim that he became aware of the actions or circumstances giving rise to his complaint only within the 90-day period before he made it to the Board. Moreover, the documentation that he included in his submissions demonstrates that he knew or ought to have known of those circumstances since at least 2018.

IV. Analysis

[26] This complaint was made under s. 190(1)(g) of the *Act*. The complainant alleges a breach of s. 187, which places an obligation on the respondent not to act in a manner that is arbitrary, discriminatory, or in bad faith. This obligation is commonly referred to as the bargaining agents' duty of fair representation.

[27] A complaint made to the Board under those provisions must be made within a specific time limit set out by s. 190(2) of the *Act*, which specifies that it must be made no 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 it.

[28] The complainant submits that he discovered only in June 2021 the factual elements that prompted him to make this complaint. However, he does not identify any fact, action, or circumstance involving the respondent that would have occurred in the 90-day period before his complaint was made, which would be from March 18 to June 16, 2021.

[29] In a complaint like this one, the burden rests with the complainant to demonstrate a breach of the duty of fair representation. However, when the Board is seized with a request to summarily dismiss such a complaint without holding an oral hearing, the factual allegations that the complainant submitted must be taken as proven for the sake of determining if they could demonstrate the existence of a breach of s. 187 of the *Act*. This is often referred to as the "arguable-case" analysis.

[30] However, this principle must be nuanced. To be taken as true in the context of an arguable-case analysis, factual allegations must be provable and have an air of reality. Arguments and opinions need not be taken as proven; nor need mere assumptions, speculations, or accusations be so taken (see *Payne v. Public Service Alliance of Canada*, 2023 FPSLREB 58 at paras. 60 and 91; *Sganos v. Association of*

Canadian Financial Officers, 2022 FPSLREB 30 at paras. 80 and 81; *Beniey v. Public Service Alliance of Canada*, 2020 FPSLREB 32 at para. 57; *Archer v. Public Service Alliance of Canada*, 2023 FPSLREB 105 at para. 29; and *Corneau v. Association of Justice Counsel*, 2023 FPSLREB 16 at para. 34).

[31] In his submissions, the complainant refers only to a revelation that apparently suddenly appeared to him during his preparation for an upcoming hearing in June 2021, as he had to review documents and information related to his different employment-related issues and to the representation that he had received from the respondent over the years. According to him, only at that point was he able to understand and realize that the respondent had not properly represented him since 1998.

[32] Respectfully, this suggestion, setting aside that it seems to be more of a mere accusation than a factual allegation, does not have an air of reality, as it is clearly contradicted by the documents that he submitted to support his complaint.

[33] In fact, some of the email excerpts that the complainant submitted demonstrate that as early as 2018, he was in the same position and had the same understanding with respect to the respondent's representation services. Here are some examples:

- In a long email to the respondent's legal representatives on July 11, 2018, the complainant stated this: "Sadly for 20 years [the employer and the respondent] have avoided these issues and allowed several illegal activities to take place in my workplace. When I tried to deal with these issues I was told by registered mail that I would not get any help [from the respondent] …".

- In an email to the Board on May 4, 2018, he stated this: "The … [respondent's] harassment and intimidation, bullying that worked successfully as a tactic for 20 years … was continued by the treatment I received from [the respondent's] lawyer …".

- In the same email, he further adds this: "Even though [the respondent] was well apprised of my condition from my federal workplace abuse, they chose to ignore the disclosure I had entrusted to them and to continue in their constructive dismissal collusion against me and the 20 years of Human Rights violations perpetrated against me by [the employer]."

- Finally, on January 30, 2018, in an email to the Board, the complainant stated this: "I am aware that the 2014 hearing was not respected in that no work was done by [the respondent] and my WSIB file remains untouched by [the respondent] since 2010."

[34] Moreover, the respondent submits that its last decision was made and communicated to the complainant in 2019. Even though that statement came from the respondent, it can also be considered in the current analysis as he does not dispute it in any way (see *Andrews v. Public Service Alliance of Canada*, 2021 FPSLREB 141 at para. 3). Thus, I must conclude that he has known since July 2019 that the respondent no longer represents him.

[35] As indicated by s. 190(2) of the *Act*, the assessment of a complaint's awareness must be limited to the facts and circumstances giving rise to the complaint (see *Besner v. Public Service Alliance of Canada*, 2023 FPSLREB 56 at para. 53; *Mohid v. Brossard*, 2012 PSLRB 36 at para. 36; and *Éthier v. Correctional Service of Canada*, 2010 PSLRB 7 at para. 18). It is not about when a complainant "clues in". Therefore, the time limit to file a complaint does not focus on personal awareness of how things fit together but on the moment a complainant ought to have known of the facts and circumstances giving rise to it. Otherwise, the time limit would mean little, and the Board would need to determine just when each complainant honestly had his or her lightbulb moment. In this case, I determined that the complainant was well aware of all such facts and circumstances at the time they arose in 2018 and 2019. He did not complain until June 2021.

[36] A years-long line of Board jurisprudence has held that the time-limit restriction set out in s. 190(2) of the *Act* may not be extended (see, for example, *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90; *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78 at para. 55; *Paquette v. Public Service Alliance of Canada*, 2018 FPSLREB 20; and *Nash v. Public Service Alliance of Canada*, 2023 FPSLREB 64 at paras. 18 to 20).

[37] However, in a recent decision, the Board suggested that it may have the implicit authority to extend that time limit (see *Beaulieu v. Public Service Alliance of Canada*, 2023 FPSLREB 100). Be that as it may, the *Beaulieu* decision still makes it clear that this implicit power is to be used only in truly exceptional or unusual cases when the failure to comply with the time limit set in s. 190(2) may be attributed to a cause that the complainant could have neither anticipated nor controlled. That decision even refers to the definition of "*force majeure*" to illustrate the meaning of what the Board could consider as a potentially exceptional circumstance.

[38] In this case, the complainant has not provided me with any exceptional or unusual circumstances to justify that the Board exercise its implicit authority, as suggested in *Beaulieu*. The documents on file set out that he has been cognizant since at least 2018 of the situations he now claims to have been aware of since only June 2021. He was also able to structure his analysis of the situation and to clearly articulate it in some email exchanges. It seems that nothing prevented him from making a complaint at that time.

[39] A bald affirmation that the respondent still declined to represent him in 2021 is not sufficient, on its own, to demonstrate the existence of an arguable case. The complainant does not allege any requests he made to the respondent after July 2019 or any communication that would indicate any interaction between him and the respondent.

[40] It seems obvious that the complainant's goal is to find a way to revisit all his employment-related issues since 1998, as well as some agreements he entered into, one with the respondent in 2014, and one with the employer in 2017. However, he must understand that the Board's role in the context of a duty-of-fair-representation complaint is not to help him resolve his disputes with the employer (see *Corneau*, at para. 95).

[41] Also, it is necessary to remind the complainant that the Board has already dismissed his attempt to revisit the 2017 agreement (see *Reid v. Deputy Head (Library and Archives of Canada)*, 2021 FPSLREB 104). As for his allegations with respect to the 2014 agreement, they are untimely, as the supporting documentation already mentioned in this decision demonstrates clearly that that allegation could have been the subject of a complaint from at least January 30, 2018.

[42] Finally, the complainant's insistence on requesting an incredibly broad disclosure of documents and information from the respondent illustrates the fact that he is on a continuous mission to find some justification for the many allegations and accusations he has made over the years against the respondent and the employer. However, the Board is not an investigative body (see *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119 at para. 160; and *McRaeJackson v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada)*, 2004 CIRB 290 at para. 49), and its jurisprudence has clearly established that the complainant cannot

simply make generic allegations in a complaint like this one based on the expectation that future discovery will support them (see *Payne*, at para. 60; and *Sganos*, at para. 81).

[43] Therefore, the Board rightfully denied the complainant's disclosure requests in this case as they were found premature. In fact, at this point of the proceedings, he had only to present **one** fact related to an action, a decision, or an omission by the respondent that occurred in the 90 days before this complaint was made and that could, assuming that it is proven, potentially demonstrate a breach by the respondent of its duty of fair representation. He failed to. He should not have to rely on a disclosure order to achieve that simple task at the early stage of the process.

V. Conclusion

[44] The complaint, as presented by the complainant, is untimely.

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

(The Order appears on the next page)

VI. Order

[46] The complaint is dismissed.

July 30, 2024.

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