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Files: 560-02-43431, 561-02-43465, and 566-02-43433

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



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

BETWEEN

LEOPOLD GOMA-YITA

Complainant and Grievor

and

**TREASURY BOARD
(Royal Canadian Mounted Police)**

Respondent and Employer

Indexed as

Goma-Yita v. Treasury Board (Royal Canadian Mounted Police)

In the matter of a complaint made under section 133 of the *Canada Labour Code*, a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*, and an individual grievance referred to adjudication

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant and Grievor: Himself

For the Respondent and Employer: Lauren Benoit, counsel

Decided on the basis of written submissions,
filed October 20, November 15, and December 4, 2023.

REASONS FOR DECISION

I. Introduction

[1] This decision concerns three matters that Leopold Goma-Yita has before the Federal Public Sector Labour Relations and Employment Board (“the Board”). Mr. Goma-Yita is the complainant in two of these files and the grievor in the third. For ease of reference, he will be referred to in this decision as “the grievor”.

[2] All three files relate to events that took place in the final few years of the grievor’s employment at the Royal Canadian Mounted Police (RCMP).

[3] On August 20, 2021, the grievor made a complaint to the Board pursuant to s. 133 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; “the *Code*”). This complaint became Board file no. 560-02-43431 (“the *Code* complaint”).

[4] On August 20, 2021, the grievor referred a grievance to adjudication under the provisions of s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*”). This became Board file no. 566-02-43433 (“the grievance”).

[5] On August 30, 2021, the grievor made a complaint to the Board pursuant to s. 190 of the *Act*, alleging that representatives of the respondent committed unfair labour practices prohibited by ss. 186(2)(a)(ii) and (iii) of the *Act*. This complaint became Board file no. 561-02-43465 (“the ULP complaint”).

[6] The respondent in all three matters is the Treasury Board, on behalf of the RCMP. The respondent raised two preliminary objections to each matter.

[7] In each case, the respondent took the position that the matter was untimely and that the Board does not have jurisdiction to decide the case. It said that the complaints were made outside the mandatory 90-day time limits under the relevant legislation (the *Code* and the *Act*). It said that the referral to adjudication was made more than 40 days after the grievor received its final-level decision in the grievance process, a timeline established in s. 90(1) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; “the *Regulations*”).

[8] The respondent’s second objections to each matter will be detailed later in this decision.

[9] Given its objections, the respondent requested that the Board dismiss the matters without a hearing.

[10] I will note that on August 20, 2021, the grievor also made a complaint under s. 190 of the *Act* against his bargaining agent, the Public Service Alliance of Canada (PSAC). In that complaint, he alleged that the PSAC violated its duty of fair representation under s. 187 of the *Act*, in relation to the grievance at issue in this decision. That complaint became Board file no. 566-02-43432 (“the DFR complaint”). I am not seized of that complaint. I mention it now because the grievor referenced the PSAC and the DFR complaint in his submissions.

[11] Initially, the Board’s Registry scheduled all four files to be heard together, from October 23 to 27, 2023. In July 2023, the DFR complaint was removed from the hearing schedule, given that it involves a different respondent.

[12] The parties were then asked for their positions on whether the respondent’s preliminary objections could be decided based on written submissions. Both parties agreed that no witnesses would be required to determine the objections.

[13] On September 26, 2023, I convened a case management conference (CMC) to discuss the written submission process. Following the CMC, I postponed the hearing and set out a schedule for the parties’ written submissions. Given that the respondent sought to have the matters dismissed without a hearing, I asked it to proceed first. It made its submissions on October 20, 2023, supplemented by a book of documents of 42 tabs and a list of authorities. The grievor made his submissions on November 15, 2023, supplemented by 3 documents. The respondent made its reply submissions on December 4, 2023.

[14] Pursuant to s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), I am satisfied that I can render a decision on the complaints and the grievance without an oral hearing.

[15] For the reasons that follow, I have determined that all three matters were untimely and that the Board does not have jurisdiction to decide them. I have also substantiated the respondent’s secondary objections on each matter.

II. Background

[16] I will briefly summarize the main events necessary for understanding the reasons that follow.

[17] The grievor began his career with the RCMP in 2009. He was initially hired as a CR-04 pay and benefits clerk. In 2014, he was promoted as an AS-02 pay and benefits advisor in the RCMP's National Pay Operations (NPO).

[18] On March 4, 2019, the grievor began a three-month assignment in another division of the RCMP, National Compensation Services (NCS).

[19] On or about April 4, 2019, the grievor was informed that his NCS assignment was being terminated early. He was returned to his substantive position in NPO.

[20] On or about April 11, 2019, shortly after his return to NPO, a team meeting was held. The grievor was not invited to the team meeting. The respondent explained that this occurred because he had only recently returned from the assignment, and RCMP management took steps to try to find him and include him in the meeting but went ahead without him after 20 minutes of searching. He submitted that the April 11 meeting was not the only one he was excluded from.

[21] The grievance was filed on May 1, 2019. The grievance alleged that the respondent failed to pay him overtime, deliberately excluded him from team meetings, and ended his assignment early. The grievance also alleged that the grievor was a victim of racism. At that time and through the internal grievance process, the grievor had the approval of his bargaining agent (the PSAC, and its component, the Union of Safety and Justice Employees (USJE)). Among other things, he sought as recourse that he be moved to a different federal government department than the RCMP.

[22] The grievance worked its way through the internal grievance process. The respondent submitted that a final-level grievance hearing occurred on February 27, 2020, with the grievor represented by a USJE staff representative. The grievor said that he never attended a final-level hearing and that he made the DFR complaint because of the representation provided by the USJE.

[23] A final-level response to the grievance was emailed to the grievor on June 22, 2020. The response noted that the overtime portion of the grievance had been resolved

at the second level of the grievance process. The aspects of the grievance dealing with the early termination of the NCS assignment and the exclusion from team meetings were denied.

[24] On June 26, 2020, the grievor sent an email in reply, expressing his displeasure with the decision and his desire to move the grievance to level four.

[25] The respondent noted that there is no level four in the RCMP's grievance process. Level three is the final level.

[26] Following some more email exchanges, on July 17, 2020, the author of the final-level reply (Carl Trottier, then Assistant Deputy Minister and Associate Chief Human Resources Officer for the RCMP) informed the grievor that the grievance had been responded to at the final level of the grievance process and that he should speak to his union representative if he wished to explore available mechanisms for recourse.

[27] The parties made extensive submissions about events that took place between July 2020 and January 2021. I will not detail all of these, but will summarize as follows. The grievor was required to attend a disciplinary meeting on July 24, 2020, concerning work performance and workplace behaviour. Following that meeting, on July 29, 2020, he was directed to commence sick leave with pay and complete a fitness-to-return-to-work evaluation (FTWE). He was informed that after his paid sick leave expired on August 13, 2020, he would be placed on leave without pay. In late August, and again in September, he indicated his intention to resign from the RCMP and the public service. His managers invited him to instead engage the RCMP's Informal Conflict Management Services (ICMS). Initially, the grievor rejected this proposal, but eventually, a facilitated discussion involving the parties and an ICMS facilitator took place, on January 7, 2021.

[28] Following the first ICMS session, the grievor pursued the completion of the FTWE. According to the respondent, the FTWE report that the grievor provided in March 2021 did not support his return to work. Another FTWE report, authored by a different physician, was provided in late April 2021; it supported a return to work.

[29] The respondent said that a second ICMS discussion took place on May 10, 2021; the grievor's submissions do not recognize this as a fact. He returned to work at a different division of the RCMP on May 17, 2021. In his submissions, he stated that the

position he returned to represented a demotion and that it was part of a constructive dismissal process.

[30] A final facilitated ICMS meeting took place June 3, 2021. The grievor submitted that it was the second session, and the respondent said that it was the third. I do not believe that anything turns on whether it was the second or third session.

[31] With respect to the timeliness of the complaints and the referral of his grievance to adjudication, the grievor submitted that the trigger date for all three matters was the ICMS session on June 3, 2021.

[32] I note that in their recounting of these noted events, both parties make mention of workplace conflict between the grievor and certain managers, and to events that contributed to that conflict. It is mentioned that the grievor made separate harassment complaints against two of his managers. No grievance about those complaints is before me. He alleged that a third manager committed an act of a criminal nature against him in the workplace, on April 25, 2019, and said he submitted a disclosure of wrongdoing related to that. He did not detail what form that disclosure took, though he does mention approaching the Ottawa, Ontario police.

[33] On May 19, 2023, the grievor resigned from the public service, effective June 2, 2023.

III. Analysis

[34] The respondent's arguments with respect to its preliminary objections numbered some 55 paragraphs. It cited 21 cases in support of its submissions.

[35] The grievor argued that the clock started ticking on making his complaints and on the referral of his grievance on June 3, 2021. In response to the respondent's arguments, he stated that they were "[n]ot applicable in [his] opinion". He did not reference any case law in his submissions. He did not respond to the case law cited by the respondent, other than generally dismissing the cases as not having been affected by the COVID-19 pandemic. He did not explain why decisions rendered pre-pandemic would not be useful to the Board; nor in fact did he make any specific submissions about how the pandemic impacted his complaints or grievance.

[36] Given those submissions by the parties, I will simply provide my reasons for upholding each of the respondent's preliminary objections. I will cite only those cases that I found particularly helpful to my decision.

[37] I will deal with each of the three files in turn, starting with the *Code* complaint, followed by the grievance, and ending with the ULP complaint. I will begin each section by summarizing the matter as described in the grievor's initiating documents. As both complaints were made and the grievance was referred in the same month and in relation to the same set of background events, there is some overlap in the events described.

[38] In each section, I will then detail the respondent's objections, followed by my reasons for upholding them.

A. The *Code* complaint

[39] The grievor made this complaint on August 20, 2021. He completed the submission of his complaint (using the Board's form for making one under the *Code*) on August 30, 2021.

[40] In this complaint, the grievor said that he never requested to be placed on leave without pay on August 14, 2020, and that he did not submit any document applying for that leave. He said that he was placed on leave without pay after he raised concerns about his health and safety in the workplace. He said that a threat had also been made against him that he could be placed on leave without pay during a meeting on April 30, 2019. He noted that two disciplinary hearings were held against him, one in mid-August 2019, and the second in July 2020. He complained that because of being placed on leave without pay, the RCMP started docking his pay in September 2020, which continued until June 8, 2021.

[41] The respondent's preliminary objections with respect to the *Code* complaint were as follows:

- the complaint was untimely; and
- the grievor failed to establish an arguable case that he exercised a right under Part II of the *Code* and that he was subjected to an action prohibited by s. 147.

[42] Complaints made under s. 133 of the *Code* are generally known as reprisal complaints. The prohibition against reprisals is found at s. 147, which reads as follows:

147 No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee

(a) has testified or is about to testify in a proceeding taken or an inquiry held under this Part;

(b) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the health or safety of the employee or of any other employee of the employer; or

(c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.

147 Il est interdit à l'employeur de congédier, suspendre, mettre à pied ou rétrograder un employé ou de lui imposer une sanction pécuniaire ou autre ou de refuser de lui verser la rémunération afférente à la période au cours de laquelle il aurait travaillé s'il ne s'était pas prévalu des droits prévus par la présente partie, ou de prendre — ou menacer de prendre — des mesures disciplinaires contre lui parce que :

a) soit il a témoigné — ou est sur le point de le faire — dans une poursuite intentée ou une enquête tenue sous le régime de la présente partie;

b) soit il a fourni à une personne agissant dans l'exercice de fonctions attribuées par la présente partie un renseignement relatif aux conditions de travail touchant sa santé ou sa sécurité ou celles de ses compagnons de travail;

c) soit il a observé les dispositions de la présente partie ou cherché à les faire appliquer.

[43] Section 133(2) of the *Code* sets out a deadline of 90 days for making a complaint in reference to s. 147. It reads as follows:

133 (2) The complaint shall be made to the Board not later than ninety 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.

133 (2) La plainte est adressée au Conseil dans les quatre-vingt-dix jours suivant la date où le plaignant a eu connaissance — ou, selon le Conseil, aurait dû avoir connaissance — de l'acte ou des circonstances y ayant donné lieu.

[44] In determining whether a complaint made under s. 133 is timely, the Board is required to define the complaint and determine its essential nature; see *Bhasin v. National Research Council of Canada*, 2023 FPSLRB 11 at para. 20.

[45] As submitted by the grievor, the *Code* complaint is interwoven with his grievance and his DFR complaint. It took several readings of the material to determine the essential nature of this complaint. However, based on the text of the complaint, it was made in relation to the RCMP's decision to place him on leave without pay, effective August 14, 2020. He said that he was warned that this could happen at a meeting in April 2019 and that he was required to attend disciplinary hearings in August 2019 and July 2020. He explained that he was without pay from September 2020 to June 8, 2021, stemming from the decision to place him on leave without pay.

[46] In his written submissions, the grievor takes the position that the date of the final ICMS session, June 3, 2021, was the trigger for the complaint. However, he provides no explanation as to why that should be accepted by the Board as the date on which he knew of the action or circumstances giving rise to the complaint.

[47] Clearly, the grievor was not satisfied with the results of the ICMS session on June 3, 2021. However, there is no reason for me to conclude that it was only on that date that he knew that he had been placed on leave without pay. By his own submissions, he knew it by August 14, 2020. All the other specific events mentioned in the complaint predate that date. This complaint was made on August 20, 2021, or more than a year after the grievor was placed on leave without pay.

[48] I find that the *Code* complaint is untimely. As such, the Board does not have jurisdiction to decide it.

[49] Beyond the complaint's timeliness, I also agree with the respondent's second objection that the grievor has failed to make out an arguable case that he experienced a reprisal prohibited under the *Code*.

[50] In a pair of cases issued in 2022, the Board reformulated the principles for assessing a complaint under s. 133 of the *Code*; see *Burlacu v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLRB 51 at para. 96, and *White v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLRB 52 at para. 73. It stated the principles as follows at that paragraph in *White*:

[73] ...

1. *Has the complainant acted in accordance with Part II of the Code or sought the enforcement of any of the provisions of that Part (section 147)?*
2. *Has the respondent taken against the complainant an action prohibited by section 147 of the Code (sections 133 and 147)? and*
3. *Is there a direct link between (a) the action taken against the complainant and (b) the complainant acting in accordance with Part II of the Code or seeking the enforcement of any of the provisions of that Part?*

[51] Having reviewed the content of the complaint, the grievor's original rebuttal to the respondent's objection, the grievor's written submissions, and the respondent's submissions, I find no clear indication that the grievor ever exercised any rights under Part II of the *Code* or sought the enforcement of any provisions of the *Code*. He referenced a conflict that began in 2018, said that he worked "in a toxic work environment", and stated that he was concerned for his health and safety. However, I find no evidence that he ever engaged in a work refusal or made a workplace-violence complaint under the provisions of the *Code* or that he took any other action to seek the enforcement of the *Code*. He referenced the disclosure of wrongdoing he made against one of his managers, but did not say, let alone demonstrate, that that was an action he took under the *Code*. As such, he did not meet the first of the criteria set out in *Burlacu* and *White*, and his complaint is also dismissed on that basis.

[52] The respondent denied that it ever engaged in any act that could be found to constitute an action of reprisal listed in s. 147 of the *Code*. I will not analyze that argument, as I have already found the complaint untimely and have dismissed it for failing to meet the first of the criteria in *Burlacu* and *White*.

B. The grievance

[53] As noted, the grievance referred to adjudication by the grievor was first presented to the RCMP on May 1, 2019. The grievance alleged that the respondent failed to pay him overtime, deliberately excluded him from team meetings, and ended his assignment early. The grievance also alleged that the grievor was a victim of racism. As noted, the grievance was filed after the grievor's NCS assignment was terminated early but more than a year and three months before the grievor was placed on leave without pay.

[54] During the internal grievance process, the grievor had the support and representation of PSAC-USJE. However, he made the referral to adjudication on his own, without their support, under s. 209(1)(b) of the *Act*. From the record before me, it is not clear whether he simply decided to refer the grievance on his own, or whether he did so because his bargaining agent declined to represent him on it.

[55] The respondent's preliminary objections with respect to the grievance were these:

- the reference of the grievance to adjudication was untimely; and
- the grievor altered the nature of the grievance to make it adjudicable (essentially, because it was filed as a collective agreement grievance but was referred as a disciplinary grievance under s. 209(1)(b) of the *Act*).

[56] When the grievance was filed, the grievor was subject to the collective agreement between the respondent and the PSAC for the Program and Administrative Services group, with an expiry date of June 20, 2021 ("the collective agreement"). Clause 18.27 states that a grievance may be referred to adjudication in accordance with the provisions of the *Regulations*. Section 90(1) of the *Regulations* provides as follows:

Deadline for reference to adjudication

90 (1) Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.

Délai pour le renvoi d'un grief à l'arbitrage

90 (1) Sous réserve du paragraphe (2), le renvoi d'un grief à l'arbitrage peut se faire au plus tard quarante jours après le jour où la personne qui a présenté le grief a reçu la décision rendue au dernier palier de la procédure applicable au grief.

[57] The grievor was provided with the final-level reply to his grievance on June 22, 2020. He wrote an email dated June 26, 2020, stating that he wished to move the grievance to level four. As noted, there is no level four in the RCMP grievance process. He might have been confused by the number of levels in the RCMP grievance process, but the record shows that on July 17, 2020, RCMP management confirmed that it had issued a final-level reply, and the grievor was advised that he should speak to his union representative about further recourse if he was unsatisfied with that reply.

[58] Based on the date of the final-level reply, I calculated that the deadline for referring the grievance to adjudication would have been August 5, 2020. The referral was made on August 20, 2021, or more than one year later.

[59] The grievor stated that the date of the final ICMS session, June 3, 2021, “... became [his] reference date for [his] complaints to the Board in accordance with article 18.07 of PA collective agreement.”

[60] However, clause 18.07 reads as follows:

18.07 The parties recognize the value of informal discussion between employees and their supervisors and between the Alliance and the Employer to the end that problems might be resolved without recourse to a formal grievance. When notice is given that an employee or the Alliance, within the time limits prescribed in clause 18.15, wishes to take advantage of this clause, it is agreed that the period between the initial discussion and the final response shall not count as elapsed time for the purpose of grievance time limits.

18.07 Les parties reconnaissent l'utilité des discussions informelles entre les employé-e-s et leurs superviseurs et entre l'Alliance et l'employeur de façon à résoudre les problèmes sans avoir recours à un grief officiel. Lorsqu'un avis est donné qu'un employé-e ou l'Alliance, dans les délais prescrits dans la clause 18.15, désire se prévaloir de cette clause, il est entendu que la période couvrant la discussion initiale jusqu'à la réponse finale ne doit pas être comptée comme comprise dans les délais prescrits lors d'un grief.

[61] The wording of clause 18.07 indicates that it applies to informal discussion “without recourse to a formal grievance” — in other words, before a grievance is filed. It refers to clause 18.15, which sets out the deadline for the initial filing of a grievance. Quite simply, clause 18.07 does not apply to this grievance. In this matter, before the parties even considered an informal discussion, a grievance had already been filed, the internal grievance process had proceeded, and a final-level reply had been issued. The deadline for the referral to adjudication expired on August 5, 2020. Only in September of 2020, after the referral deadline had passed, did the parties agree to participate in an ICMS process. Their agreement to use ICMS did not precede the filing of a grievance, and therefore their agreement to do so at that time does not engage clause 18.07.

[62] The final-level reply was delivered to the grievor on June 22, 2020, and the grievance was referred to adjudication on August 20, 2021, or more than a year later. As there is no evidence that the parties mutually agreed to extend the deadline for the

referral of the grievance to adjudication (as allowed for in clause 18.22 of the collective agreement), the referral was untimely.

[63] I will note that the respondent made extensive arguments as to why the Board should not use s. 61(b) of the *Regulations* to extend the deadline for the referral of the grievance to adjudication, “in the interest of fairness”. It argued that the grievance does not meet the criteria used by the Board when assessing extension requests under s. 61(b); see *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1 at para. 75. In particular, no clear, cogent, or compelling reasons for the delay have been provided, it said.

[64] In this case, the grievor did not make an application to extend the timeline for the referral of his grievance to adjudication. Neither did he respond to the respondent’s arguments, dismissing them as “not applicable”. I find no reason to consider an extension under s. 61(b) of the *Regulations*.

[65] The respondent’s second objection was that the grievor changed the nature of the grievance upon its reference to adjudication, by referring it under s. 209(1)(b). The case law is clear, it said; any attempt to recharacterize a collective agreement grievance as disciplinary at the adjudication stage will not be permitted. See, for example, *Burchill v. Attorney General of Canada*, 1980 CanLII 4207 (FCA) at 110, *Shneidman v. Canada (Attorney General)*, 2007 FCA 192 at para. 26, and *Lee v. Deputy Head (Canadian Food Inspection Agency)*, 2008 PSLRB 5 at para. 21.

[66] Section 209(1)(b) of the *Act* is the provision that allows an employee to refer a grievance to adjudication when it is related to “... a disciplinary action resulting in termination, demotion, suspension or financial penalty ...”. Employees may refer such grievances to adjudication on their own. Employees wishing to refer to adjudication a grievance related to the interpretation of a collective agreement, under s. 209(1)(a), must first obtain the approval of their bargaining agent to be represented by it; see s. 209(2).

[67] In his initial rebuttal to the respondent’s objection, the grievor made a number of submissions with respect to the representation that he received from the PSAC on his grievance. Those submissions relate more to his DFR complaint against the PSAC than to this grievance referral. I presume that the grievor decided to make the referral

under s. 209(1)(b) because he knew he could do so on his own, without the support of the PSAC.

[68] The grievor's grievance, as presented to the RCMP on May 1, 2019, was related to the interpretation of the collective agreement. It was not a grievance about discipline. The grievance predates the disciplinary meeting that the grievor said he was required to attend in July 2019. It predates by more than a year him being placed on leave without pay (which in any case, the respondent denies was a disciplinary move). The respondent provided all the grievance replies it issued to the grievance; none of those replies indicates that the grievance was about discipline. The respondent provided copies of a written submission on the grievance that it received from the grievor's bargaining unit representatives during the grievance process. That submission does not mention discipline.

[69] Following *Burchill*, *Shneidman*, and *Lee*, I find that the grievor was not able to refer this (May 1, 2019) grievance to adjudication under s. 209(1)(b) of the *Act*. As such, the grievance is denied on that basis as well as for being untimely.

C. The ULP complaint

[70] The grievor made his ULP complaint on August 30, 2021. In the complaint, he accused two of his managers of inappropriately liaising with union representatives in handling his grievances, of engaging in intimidation for him trying to protect his health and safety, and for choosing to place "[i]nterpersonal relationships in the workplace over professional responsibility". In terms of specific events, the complaint mentions a meeting with management on April 30, 2019, a grievance hearing of September 18, 2019, and a disciplinary meeting held at the end of July 2020. The form that he used to make the complaint also provided details of his DFR complaint against the PSAC, which are not relevant to the matter before me.

[71] The respondent's preliminary objections with respect to the ULP complaint were as follows:

- the complaint was untimely; and
- the grievor failed to establish an arguable case that the respondent engaged in an unfair labour practice prohibited by the *Act*.

[72] The complaint as presented identified the alleged unfair labour practices as those prohibited by ss. 186(2)(a)(ii), s. 186(a)(iii), and s. 186(2)(a)(iv) of the Act, although I presume from the context that the second reference was to s. 186(2)(a)(iii). Unfair-labour-practice complaints of this nature are generally known as reprisal complaints. This portion of the Act is designed to protect employees against reprisals from employers for having filed a grievance or having participated in a grievance or complaint process; see *Quadrini v. Canada Revenue Agency*, 2008 PSLRB 37 at para. 45. Section 186(2)(a) reads as follows:

186 (2) No employer, no person acting on the employer's behalf, and, whether or not they are acting on the employer's behalf, no person who occupies a managerial or confidential position and no person who is an officer as defined in subsection 2(1) of the Royal Canadian Mounted Police Act or who occupies a position held by such an officer, shall

(a) refuse to employ or to continue to employ, or suspend, lay off, discharge for the promotion of economy and efficiency in the Royal Canadian Mounted Police or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment, or intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of an employee organization, or participates in the promotion, formation or administration of an employee organization,

(ii) has testified or otherwise participated, or may testify or

186 (2) Il est interdit à l'employeur, à la personne qui agit pour le compte de celui-ci ainsi qu'au titulaire d'un poste de direction ou de confiance, à l'officier, au sens du paragraphe 2(1) de la Loi sur la Gendarmerie royale du Canada ou à la personne qui occupe un poste détenu par un tel officier, qu'ils agissent ou non pour le compte de l'employeur :

a) de refuser d'employer ou de continuer à employer une personne donnée, ou encore de la suspendre, de la mettre en disponibilité, de la licencier par mesure d'économie ou d'efficacité à la Gendarmerie royale du Canada ou de faire à son égard des distinctions illicites en matière d'emploi, de salaire ou d'autres conditions d'emploi, de l'intimider, de la menacer ou de prendre d'autres mesures disciplinaires à son égard pour l'un ou l'autre des motifs suivants :

(i) elle adhère à une organisation syndicale ou en est un dirigeant ou représentant — ou se propose de le faire ou de le devenir, ou incite une autre personne à le faire ou à le devenir —, ou contribue à la formation, la promotion ou l'administration d'une telle organisation,

(ii) elle a participé, à titre de témoin ou autrement, à toute procédure

<i>otherwise participate, in a proceeding under this Part or Part 2 or 2.1,</i>	<i>prévue par la présente partie ou les parties 2 ou 2.1, ou pourrait le faire,</i>
<i>(iii) has made an application or filed a complaint under this Part or Division 1 of Part 2.1 or presented a grievance under Part 2 or Division 2 of Part 2.1, or</i>	<i>(iii) elle a soit présenté une demande ou déposé une plainte sous le régime de la présente partie ou de la section 1 de la partie 2.1, soit déposé un grief sous le régime de la partie 2 ou de la section 2 de la partie 2.1,</i>
<i>(iv) has exercised any right under this Part or Part 2 or 2.1</i>	<i>(iv) elle a exercé tout droit prévu par la présente partie ou les parties 2 ou 2.1 [...]</i>

[73] Complaints such as this are subject to s. 190(2) of the Act, which sets a deadline of 90 days to make one and reads as follows:

<i>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 or circumstances giving rise to the complaint.</i>	<i>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 — connaissance des mesures ou des circonstances y ayant donné lieu.</i>
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[74] As with the grievor's *Code* complaint, it is important to try to determine the essential nature of it. Having reviewed the ULP complaint, the grievor's rebuttal to the respondent's objection, and his written submissions, I conclude that the issues underlying this complaint were events in the grievance process (in 2019 and 2020) and the fact that he was put on leave without pay effective August 14, 2020 and that after the grievor said that he wanted to retire from the public service in August and September of 2020, his managers and union representative instead encouraged him to participate in the ICMS process.

[75] As with his *Code* complaint and the grievance, the grievor took the position that the ULP complaint was timely because it was made within 90 days following the ICMS mediation held on June 3, 2021. However, none of his submissions provide any explanation as to why June 3, 2021, was the date on which he knew of the action or circumstances giving rise to the complaint.

[76] None of the specific events listed in the ULP complaint took place within the 90 days before it was made. Like the grievor's *Code* complaint, this complaint is untimely. As such, the Board does not have jurisdiction to decide it.

[77] In addition, I agree with the respondent that the grievor has failed to make out an arguable case that he was subject to a reprisal prohibited by s. 186(2)(a) of the *Act*.

[78] Under s. 191(3) of the *Act*, a complaint that an employer has not complied with s. 186(2) is deemed to be evidence that the failure to comply actually occurred, and a reverse onus is placed on the respondent to prove that it did not engage in the unfair labour practice. However, the Board has long held that to engage the reverse-onus provision at s. 191(3), a complainant must first make out an arguable case that a reprisal took place; see *Quadrini*, at para. 32, and *Joe v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLREB 10 at para. 42.

[79] The grievor has not, in this complaint, provided a coherent argument of what action or actions by the respondent constituted a reprisal against him for having filed a grievance. He alleged that management abused its power in dealing with his union representatives, that it should not have placed him on leave without pay pending the completion of an FTWE, and that it and the union inappropriately collaborated when they told him not to resign from the RCMP in August of 2020 and instead advised him to participate in the ICMS process. More than once, he complained that his managers placed "[i]nterpersonal relationships in the workplace over professional responsibility". His submissions refer to various events, including allegations of wrongdoing and alleged criminal acts, but fall short of providing facts that would allow me to conclude that the complaint was timely, or that they amounted to a reprisal for having filed a grievance.

[80] In my assessment, none of the grievor's alleged actions amount to an arguable case that the respondent engaged in a reprisal prohibited by s. 186(2), and the complaint is also dismissed on that basis.

IV. Conclusion

[81] It is clear that underlying the two complaints and the grievance before the Board is a story of a conflict between the grievor and the RCMP in what turned out to be the final few years of his employment with it. In early 2019, an assignment he was on with

another section was terminated early. He filed the grievance at issue in this decision as a result. While part of the grievance he filed was allowed by management (his claim for overtime), other parts of it were not, and the grievance proceeded through the internal process. It was denied at the final level in June of 2020. The grievor was unhappy with that result, and let management know. After a disciplinary meeting in July of 2020, management asked him to undergo an FTWE and placed him on sick leave with pay. After his sick leave credits were exhausted, he was placed on leave without pay. The grievor said that he wanted to resign from the RCMP and the public service, in both August and September of 2020. His managers and union encouraged him to engage in an ICMS process. Eventually, he agreed. In April 2021, he completed an FTWE that recommended that he could return to work, and in May 2021, he returned to work, in a new position. A final ICMS session was held in June of 2021. In August of 2021, he made the *Code* complaint and the ULP complaint and referred his grievance to adjudication.

[82] Underneath all this, it is clear that the grievor believed that he experienced harassment and a lack of support, and it appears that the RCMP had concerns about his performance and behaviour in the workplace.

[83] Eventually, in May of 2023, the grievor resigned from the RCMP and the public service.

[84] Through his complaints and his grievance referral, the grievor sought to have his story heard by the Board. He asked that his complaints and grievance proceed to a hearing. I understand that desire.

[85] However, the Board does not have a general mandate to inquire into the story about the workplace conflicts that the grievor wished to speak about. The Board's jurisdiction is limited by the *Act*. Its role is to decide grievances and complaints that are properly before it.

[86] In this case, the *Code* and the *Act* set out timelines for making a complaint and the *Regulations* sets out the timeline for the referral of a grievance to adjudication. All three of the grievor's matters were not placed before the Board in accordance with those timelines. All three matters were untimely. The Board is without jurisdiction to render a decision on them.

[87] In addition, the several Acts and regulations that govern the Board's role, and the case law of the Board and its predecessors, have established certain criteria that complaints and grievances must meet to be upheld by the Board. In this case, the grievor's *Code* complaint lacked the required elements set out in *Burlacu* and *White*. His grievance referral did not adhere to the principle that the grievance referred to the Board must be the same as the one that was presented to the respondent; see *Burchill*, *Shneidman*, and *Lee*. His ULP complaint lacked the essential requirements of making out an arguable case; see *Quadrini* and *Joe*.

[88] When a respondent raises preliminary objections such as these, the grievor must engage with their arguments and demonstrate to the Board that his matters are timely and legitimately within the jurisdiction of the Board. In this case, he said that the respondent's submissions were "not applicable". He simply stated his view that his matters were timely and within the jurisdiction of the Board. He asked for an oral hearing.

[89] In the absence of any effective response from the grievor, I have upheld the respondent's objections. As such, the Board has no mandate to hear the matters in this case, and the complaints are dismissed, and the grievance denied.

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

(The Order appears on the next page)

V. Order

[91] The respondent's preliminary objections are allowed.

[92] The complaints are dismissed, and the grievance is denied.

May 14, 2024.

**David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**