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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

BRITTANY RACKHAM

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as

Rackham 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: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Sandra Gaballa, Public Service Alliance of Canada

Decided on the basis of written submissions,
filed March 8, June 25, and August 16, 2024.

REASONS FOR DECISION

I. Overview

[1] This decision provides the reasons for dismissing a complaint made by Brittany Rackham against the Public Service Alliance of Canada (PSAC) because her complaint does not disclose an arguable case against it.

II. Facts of the dispute

[2] On January 3, 2024, Ms. Rackham was told that Frank Janz, the regional vice-president of the Union of Safety and Justice Employees (USJE), accused her of being a “scab” because she crossed a picket line in April 2023. The USJE is a component of PSAC, so its vice-president is an officer of PSAC. Ms. Rackham occupied a position that performed essential services, so she was required to work during a strike and was not a “scab”. Ms. Rackham gave Mr. Janz and the USJE a copy of the email designating both her acting and substantive positions as essential in April 2023, but Mr. Janz made his internal union complaint against her anyway. The matter ended after Ms. Rackham explained this during her phone call on January 3, 2024 and nothing came of the internal complaint. Mr. Janz is now retired.

[3] Ms. Rackham had previously made a complaint against PSAC alleging that it violated its duty of fair representation toward her. The Federal Public Sector Labour Relations and Employment Board (“the Board”) dismissed that complaint on June 13, 2024, in *Rackham v. Public Service Alliance of Canada*, 2024 FPSLREB 80. Ms. Rackham alleges that Mr. Janz’s allegation was retaliation for her having made allegations against him during the course of that duty-of-fair-representation complaint.

III. Procedure followed in this complaint

[4] Ms. Rackham made this complaint on January 29, 2024. PSAC filed its response on March 8, 2024, and asked that the complaint be dismissed without a hearing. Ms. Rackham filed a reply to that response. I was assigned to be a panel of the Board to hear this complaint. Having reviewed the complaint, PSAC’s response, and Ms. Rackham’s reply I decided to assess whether the complaint disclosed an arguable case. I provided the parties with an opportunity to make further submissions about whether there is an arguable case in favour of this complaint, and both parties provided submissions.

[5] This Board has previously used an “arguable case” analysis, which requires that the Board consider all of the facts alleged by the complaint as true and then determine whether the complainant has made out an arguable case that the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) has been violated; see *Corneau v. Association of Justice Counsel*, 2023 FPSLREB 16 at para. 17.

[6] In other words, I am assuming that Ms. Rackham can demonstrate that Mr. Janz filed an internal union complaint against her in bad faith to retaliate against her for having made a duty of fair representation complaint against PSAC.

IV. These facts do not give rise to a complaint that falls within s. 188 of the Act

[7] Ms. Rackham complains that the act of (wrongly) accusing her of being a “scab” was in bad faith and a form of retaliation for her having made a duty-of-fair-representation complaint against PSAC in January 2023. Ms. Rackham alleges that this retaliation violated ss. 188(c), (d), or (e) of the Act.

[8] It does not.

[9] Paragraphs 188(c) through (e) of the Act read as follows:

188 No employee organization and no officer or representative of an employee organization or other person acting on behalf of an employee organization shall

...

(c) take disciplinary action against or impose any form of penalty on an employee by applying the employee organization’s standards of discipline to that employee in a discriminatory manner;

(d) expel or suspend an employee from membership in the employee organization, or take disciplinary action against, or impose any form of penalty on, an employee by reason of that employee having exercised any right under this Part or Part 2 or 2.1 or having refused

188 Il est interdit à l’organisation syndicale, à ses dirigeants ou représentants ainsi qu’aux autres personnes agissant pour son compte :

[...]

c) de prendre des mesures disciplinaires contre un fonctionnaire ou de lui imposer une sanction quelconque en appliquant d’une manière discriminatoire les normes de discipline de l’organisation syndicale;

d) d’expulser un fonctionnaire de l’organisation syndicale, de le suspendre, de prendre contre lui des mesures disciplinaires ou de lui imposer une sanction quelconque parce qu’il a exercé un droit prévu par la présente partie ou les parties 2 ou 2.1 ou qu’il a refusé

to perform an act that is contrary to this Part or Division 1 of Part 2.1; or

(e) discriminate against a person with respect to membership in an employee organization, or intimidate or coerce a person or impose a financial or other penalty on a person, because that person has

(i) testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part or Part 2 or 2.1,

(ii) 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

(iii) exercised any right under this Part or Part 2 or 2.1.

d'accomplir un acte contraire à la présente partie ou à la section 1 de la partie 2.1;

e) de faire des distinctions illicites à l'égard d'une personne en matière d'adhésion à une organisation syndicale, d'user de menaces ou de coercition à son égard ou de lui imposer une sanction, pécuniaire ou autre, pour l'un ou l'autre des motifs suivants :

(i) elle a participé, à titre de témoin ou autrement, à une procédure prévue par la présente partie ou les parties 2 ou 2.1, ou pourrait le faire,

(ii) 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,

(iii) elle a exercé un droit prévu par la présente partie ou les parties 2 ou 2.1.

[10] I may quickly dispense with most of those paragraphs of the Act. PSAC/USJE took no disciplinary action against Ms. Rackham and did not impose a financial penalty on her, so s. 188(c) cannot apply. The act of investigating something does not amount to a disciplinary action (see *Corbett v. Professional Institute of the Public Service of Canada*, 2016 PSLREB 82 at para. 26), so the act of receiving and then dismissing a complaint without even investigating it cannot amount to discipline either. PSAC/USJE did not expel her from membership or take disciplinary action against her, so s. 188(d) cannot apply. PSAC/USJE did not discriminate against Ms. Rackham “with respect to membership”, because her membership has not been affected, and again, it did not impose a financial or other penalty on her. This disposes of most of s. 188(e).

[11] This leaves the prohibition against actions that “intimidate or coerce” a person in s. 188(e). When I offered the parties the opportunity to make further submissions in this case, I drew their attention specifically to that term.

[12] Does accusing someone of being a scab fall within the meaning of “intimidate or coerce”, even if it was done in bad faith to retaliate against someone for having filed a duty of fair representation complaint? I have concluded that it does not.

[13] In *Corbett*, a predecessor to the Board adopted the meaning of the phrase “intimidate or coerce” articulated by the Ontario Labour Relations Board (OLRB) in *National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) v. Atlas Specialty Steels*, 1991 CanLII 6181 (ON LRB) at para. 12, which states:

12 ... In order for there to be even an arguable case ... there must be intimidation or coercion of a sort which seeks to compel a person, amongst other things, to refrain from exercising any of the rights they might enjoy under the Act. There must be some force or threatened force, whether of a physical or non-physical nature....

[14] The facts alleged by Ms. Rackham fall short of alleging that she was intimidated or coerced in a way that amounted to some threatened non-physical force.

[15] There are a small number of cases in the OLRB about whether making a complaint or “charge” against a union member amounts to intimidation or coercion. Typically, the OLRB has only found that filing a charge against a union member is intimidation or coercion in a closed shop or when the union operates a hiring hall. This makes sense, as such a complaint puts the union member’s livelihood at stake because without union membership they cannot work in a closed shop or are excluded from the hiring hall.

[16] For example, in *Smith v. I.A.B.S.O.I., Local 700*, [1998] O.L.R.B. Rep. 719 at para. 15, the OLRB concluded that charging three union members working within a hiring-hall system constituted intimidation or coercion because the charges came with “penalties with clear employment related consequences”. The OLRB concluded that inviting the union members to “step outside” was not intimidation or coercion because of the nature of the work and union environment. Concluding that charging a union member when the complaint can lead to them losing their employment is intimidation but that a threat to beat them up is not shows how meaningful the consequences of the charge in a hiring-hall system was for the OLRB in that case.

[17] Similarly, pursuing a complaint against a union member was intimidation or coercion in *Egan v. P.A.T., Local 1783*, [1983] O.L.R.B. Rep. 298 because the charges could mean that the union member would also lose his job. However, in that case the union member was actually convicted of the charge and the union imposed a financial penalty, so it was not necessary that the charge itself constitute intimidation or coercion for the OLRB to have jurisdiction over the complaint. Nevertheless, the OLRB was concerned about the charge as well as the conviction because it could lead to a loss of employment.

[18] The only case that I am aware of in which the OLRB concluded that the act of making internal charges against a union member outside a hiring-hall system constitutes intimidation or coercion is *McDonald v. CUPE*, [2017] O.L.R.B. Rep. 833. However, in both that decision and two earlier decisions refusing to strike the complaint on a preliminary basis (2012 CarswellOnt 966, and [2012] O.L.R.D. No. 4531), the OLRB did not expressly consider whether making an internal charge met the threshold of intimidation or coercion. Instead, it focused on whether the person filing the charge was a union official (they were) and the official's motivation for filing the charge (which was to retaliate for the wording of the union member's earlier duty-of-fair-representation complaint).

[19] When it did turn to what actions constituted the intimidation or coercion, the OLRB relied on things that went much further than they did in this case. In *McDonald*, the union executive scheduled a special meeting of the membership to discuss the charges publicly, set up a "trial board" for the charges, and started the trial before the charges were dropped. As the OLRB put it in its 2017 decision:

...

35 The critical turning point in this case occurred at the meeting of the union executive on October 5, 2011. Allen's charges were discussed as part of "other business" of an official meeting, and a decision was taken by the executive as a whole to schedule a Special Meeting of the membership for the purpose of announcing Allen's charges and setting the process in motion for the establishment of a trial board. Two of the union's officers tried to talk Allen out of her undertaking. In my view, the executive should have gone further. They ought not to have called a Special Meeting and given the President of the union an official platform to announce her charges publicly, and they ought to have refused to permit the constituting of a trial board....

...

[20] In *McDonald*, the OLRB did not conclude that making an internal union complaint is serious enough **by itself** to constitute intimidation or coercion. It concluded that the breach of the statute in that case was airing the dispute in a special meeting of the entire membership and then establishing a trial board. In this case, Ms. Rackham's allegations are that Mr. Janz's complaint was over well before reaching those stages.

[21] I have concluded that the act of making a single complaint against a union member does not constitute intimidation or coercion, even if the complaint was made in bad faith. There has to be something in addition to simply making a single internal union complaint to constitute intimidation or coercion. In this case, PSAC/USJE either dismissed the complaint summarily or ignored it, it is not clear which. Regardless, the complaint did not progress beyond it having been made and Ms. Rackham being informed about it. She did not have to go through an internal hearing, the complaint was not aired in front of the union membership, and her employment was never at jeopardy. Ms. Rackham has not identified any impact that rises to the level of intimidation or coercion; therefore, I must dismiss this complaint.

[22] Ms. Rackham ended her June 25, 2024, submissions as follows: "This case needs to be brought forward to a Judicial Hearing with the board, because I want it to be public knowledge so other members can see the Harassment that is partaking [*sic*] by the RVP [regional vice president, Mr. Janz] of USJE."

[23] Ms. Rackham has her wish — this is all now public knowledge. Hopefully, this public airing will permit everyone involved to ratchet down this conflict.

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

(The Order appears on the next page)

V. Order

[25] The complaint is dismissed.

October 10, 2024.

**Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board**