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

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

BETWEEN

ABDERRAHIM TOURI

Complainant

and

TREASURY BOARD
(Department of National Defence)

Respondent

Indexed as
Touri v. Treasury Board (Department of National Defence)

In the matter of a complaint made under section 133 of the *Canada Labour Code*

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Ariane Beaulieu, counsel

Heard by videoconference,
November 12, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Overview

[1] Abderrahim Touri ("the complainant") made a complaint under s. 133(1) of the *Canada Labour Code* (R.S.C., 1985, c. L-2; "the *Code*"). He alleges that the respondent imposed discipline on him, namely, a two-day suspension without pay, in retaliation for exercising his rights, contrary to s. 147 of the *Code*.

[2] Approximately two weeks before the hearing, the complainant asked that I recuse myself, for several reasons. I denied his request, with reasons to follow, and informed the parties that the hearing would proceed as scheduled. He refused to attend the hearing because of my refusal to allow his recusal request.

[3] For the following reasons, I dismiss the complaint.

II. Background

A. The complaint

[4] The complainant alleges that the respondent contravened s. 147 of the *Code* by imposing the unpaid two-day suspension disciplinary penalty. According to him, it was a retaliatory measure for exercising his *Code* rights. A careful reading of the allegations reveals that the discipline was linked to the complainant's alleged misconduct toward a co-worker.

[5] In his complaint, the complainant also alleges irregularities in the respondent's fact-finding process, in connection with his alleged misconduct. Finally, he criticizes the respondent for not taking the necessary measures to safeguard his workplace health and safety. He also mentions the grievances that he filed against the respondent for different reasons. But they are not at issue in this case.

[6] The relevant *Code* provisions read as follows:

…	[…]
133 (1) *An employee, or a person designated by the employee for the purpose, who alleges that an employer has taken action against the employee in contravention of section 147 may, subject to*	***133 (1)*** *L'employé — ou la personne qu'il désigne à cette fin — peut, sous réserve du paragraphe (3), présenter une plainte écrite au Conseil au motif que son employeur*

subsection (3), make a complaint in writing to the Board of the alleged contravention.	*a pris, à son endroit, des mesures contraires à l'article 147.*
…	[…]
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*	***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) *has testified or is about to testify in a proceeding taken or an inquiry held under this Part;*	***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) *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*	***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) *has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part.*	***c)*** *soit il a observé les dispositions de la présente partie ou cherché à les faire appliquer.*
…	[…]

[7] From the start, I would like to clarify that the complainant did not prove any of the allegations in his complaint, as I will discuss later in my decision.

B. The preliminary steps that led to the hearing

[8] On June 26, 2024, the Federal Public Sector Labour Relations and Employment Board ("the Board") informed the complainant that the hearing would take place from November 12 to 14, 2024, by videoconference.

[9] On July 7, 2024, the complainant requested that the hearing be held in person, to preserve the proceedings' transparency and impartiality and to respect the *audi alteram partem* rule; i.e., the right to be heard. In its response, the respondent stated its opinion that the complaint could be heard by videoconference and that the complainant did not provide a reason to justify an in-person hearing. It noted that hearings conducted virtually are subject to the principles of transparency and impartiality and allow exercising a complainant's rights in the same way as do in-person hearings. It emphasized that the choice of hearing mode was consistent with the Board's *Guidelines on Hearing Mode Selection*.

[10] On July 17, 2024, I denied the complainant's request on the basis that he did not provide compelling reasons to justify an in-person hearing or demonstrate the harm that he would suffer were the hearing held by videoconference. In addition, I reassured him that virtual hearings respect the principles of transparency and impartiality and that they allow each party to be heard.

[11] The pre-hearing conference was held on October 16, 2024. Among the procedural issues discussed, in particular I explained to the complainant how the hearing would unfold and emphasized that he had the burden of proof to demonstrate that his complaint was founded. On that point, I referred him to the relevant case law. He contradicted me by stating that instead, the respondent had the burden of proof.

[12] On October 23, 2024, the complainant requested a case management conference, to address technical and procedural issues. It took place on October 31, 2024. At it, he requested that I recuse myself, for several reasons. I suggested that he make his recusal request in writing, so that I could study it carefully and so that the respondent would have an opportunity to respond. To that end, I established a schedule. I also clarified to the parties that were I to dismiss the request, the hearing would be held as scheduled, from November 12 to 14, 2024. I also reminded the complainant that he had the burden of proof to prove that his complaint was founded. The summary of the case management conference was sent to the parties on the same day.

[13] On October 31, 2024, the complainant made the recusal request. The reasons supporting it are as follows:

1) the refusal to accept his request that the hearing proceed in person;

2) the refusal to order the respondent's witnesses not to wear their military uniforms while testifying, to not influence me;
3) the refusal to allow recording the hearing;
4) the refusal to send to the parties a copy of the minutes of the October 16, 2024, pre-hearing conference;
5) the refusal to order that the co-worker who complained of misconduct against the complainant produce evidence of his or her Canadian citizenship and federal government employment contract;
6) the refusal to visit the complainant's workplace, and the suggestion that instead he provide photographs of the locations he considered relevant to the litigation;
7) clarifying at the pre-hearing conference that he had the burden of proof; and
8) the fact that before my appointment as a Board member, I held senior counsel positions at two national appeal courts, which put me "[translation] in a situation of conflict of interest and favouritism".

[14] On November 4, 2024, the respondent responded to the recusal request. To summarize, it asked that the request be dismissed because it was unfounded and did not meet the requirements established by the case law. It submitted that disagreeing with a Board decision is not sufficient to allow a challenge.

[15] On the same day, in writing, the complainant informed the Board and the respondent that he would not reply to the respondent's response, as I had allowed him to. In his letter, he indicated that if I refused to recuse myself, he would challenge my decision before the Federal Court of Appeal.

[16] I dismissed the recusal request on November 6, 2024, with reasons to follow. In my directive, I informed the parties that the hearing would proceed as scheduled, from November 12 to 14, 2024, and I specified the following:

> [Translation]
>
> *The complainant is advised that he has the burden of proof and that he must present evidence to support his complaint at the hearing. If he decides not to attend the hearing, as he appears to have indicated in his November 1, 2024, email, his complaint may be dismissed due to the failure to present the evidence required to support it.*

[17] On November 8, 2024, the Board's Registry gave the parties the information necessary to join the hearing by videoconference, scheduled for November 12, 2024, at 9:30 a.m. On the same day, the complainant requested that the hearing be postponed until the Court ruled on my refusal to recuse myself. The respondent objected. It reminded that the hearing had been scheduled long ago and pointed out that it had

invested a great deal of time and resources preparing for it. It reminded that the Board's interlocutory decisions are not subject to judicial review while the administrative process is ongoing, unless there are exceptional circumstances, and there are none in this case.

[18] After considering the complainant's request to postpone the hearing and the respondent's response, I rejected the request because it was not supported by clear, cogent, and compelling reasons, as required by the Board's *Policy on Postponements of Hearings* (available on its website). I agree with the respondent that except in exceptional circumstances — none are present in this case — the Federal Court of Appeal's jurisprudence makes it clear that the Board's interlocutory decisions cannot be subjected to judicial review while the administrative process is ongoing. I reminded the parties that the hearing would begin as scheduled on November 12, 2024, at 9:30 a.m., virtually.

[19] The complainant did not attend the hearing. At approximately 9:35 a.m., I asked the Registry to contact him, to verify whether he had been prevented from attending. It informed me that he did not answer the call but that a voicemail message was left inviting him to contact the Board. I also asked the Registry to try to contact him by email. At 9:45 a.m., it emailed him and asked him to confirm, by 10 a.m., whether he intended to attend the hearing. The email also set out the potential consequences of his absence from the hearing of his complaint. Those efforts were unacknowledged.

[20] The hearing resumed at 10 a.m., in the complainant's absence. Given all that had occurred, the respondent requested that the complaint be dismissed and affirmed that there was no evidence to support it. After carefully considering the respondent's arguments and the applicable law, I agreed to its request.

[21] On November 22, 2024, the complainant made a judicial-review application of my decision not to recuse myself and to refuse to suspend the hearing until the Court decided his application (A-381-24). On March 13, 2025, the Court dismissed it.

III. Analysis and reasons

A. The recusal request

[22] As I already stated, on November 6, 2024, I informed the parties that I dismissed the complainant's recusal request, with reasons to follow. Here are the reasons.

[23] In *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369, the Supreme Court of Canada formulated the test for a reasonable apprehension of bias as follows:

> …
>
> *… the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information… that test is "what would an informed person, viewing the matter realistically and practically … conclude. Would he think that it is more likely than not that* [the decision maker]*, whether consciously or unconsciously, would not decide fairly."*
>
> …

[24] The complainant submitted a series of reasons to support his recusal request. I will analyze each one in turn.

1. The refusal to accept the complainant's request that the hearing proceed in person

[25] From the start, it is important to set out that the Board has the power to order that a hearing be held virtually (see s. 20(c) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365, "the *Act*"); and *Ghafari v. Canada (Attorney General)*, 2023 FCA 206 at para. 22). The case law also recognizes that the Board is the master of its own procedure (see *Exeter v. Canada (Attorney General)*, 2012 FCA 119 at para. 27). Finally, the hearing mode used in this case was consistent with the Board's *Guidelines on Hearing Mode Selection*.

[26] The complainant's reasons supporting his request for an in-person hearing were unconvincing. Specifically, he based his request on the need to ensure the proceedings' transparency and impartiality as well as on the right to be heard. As I explained to him at the pre-hearing conference on October 16, 2024, a videoconference hearing is transparent and impartial and respects the rule that all parties have the right to be

heard. He was unable to specify the prejudice that he would suffer were the hearing held by videoconference.

[27] Moreover, courts and tribunals have consistently held that there is nothing "inherently unfair" about holding a virtual hearing (see, for example, *Sanayhie v. Durham Regional Police Services Board*, 2025 ONSC 287; *College of Physicians and Surgeons of Ontario v. Dr. X*, 2021 ONCPSD 38 at para. 31; *Miller v. FSD Pharma, Inc.*, 2020 ONSC 3291 at para. 10; and *Ontario College of Teachers v. Mammarella*, 2022 ONOCT 87 at para. 93).

[28] For those reasons, I rejected the complainant's request to hold the hearing in person.

2. The refusal to order the respondent's witnesses not to wear their military uniforms while testifying, to not influence me

[29] There were no grounds that would justify an order prohibiting witnesses from wearing their military uniforms while testifying. Witnesses may wear any clothing of their choice, provided it respects decorum. In fact, at the pre-hearing conference, I tried to allay the complainant's fears that I would be unduly influenced by a witness in uniform by explaining that it would not affect my judgment.

3. The refusal to allow recording the hearing and to send the parties a copy of the minutes of the October 16, 2024, pre-hearing conference

[30] The *Act* has no provision requiring the Board to record its hearings. The Board's *Guide to Complaints - Occupational Health and Safety (CLC)* (available on its website; "the *Guide*") states that in general, hearings are not recorded, and minutes are not produced. Of course, there are exceptions. In the past, the Board has permitted recording hearings in highly complex cases in which the hearings last several weeks (see *Boshra v. Canadian Association of Professional Employees*, 2012 PSLRB 78 at paras. 10 to 13; and *Singaravelu v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 8 at para. 29). I would also like to emphasize that recording labour-tribunal hearings is not the norm (see *British Columbia Public School Employers' Association/A Certain School District v. British Columbia Teachers' Federation/A Certain Teachers' Association*, 2024 CanLII 72129 (BC LA)).

[31] The complainant was unable to explain how the circumstances of his file justified recording the hearing. I have no doubt that the complaint is of particular

importance to him and that he is personally invested in it. However, it does not raise issues of great complexity that would justify recording the proceedings. In fact, the hearing was scheduled for only three days.

[32] Finally, although according to the *Guide*, the Board does not produce minutes, a brief summary of the October 16, 2024, pre-hearing conference was provided to the parties on the same day. It set out the schedule for the next steps. The complainant did not explain how that gave rise to a reasonable apprehension of bias on my part.

4. The refusal to order that the co-worker who complained of misconduct against the complainant produce evidence of his or her Canadian citizenship and federal government employment contract

[33] The complaint raises the question of whether the respondent took retaliatory action against the complainant for availing himself of the rights under the *Code*'s "Part II - Occupational Health and Safety". He was unable to explain how the co-worker's proof of citizenship and employment contract were of a defensible pertinence to deciding the complaint (see *Canadian Labour Arbitration*, 5th Ed., at paragraph 3:11, *Production of Documents-Ordering Production*; and *Dalhousie University v. Dalhousie Faculty Assn.* (2023), 348 L.A.C. (4th) 315 at para. 14 and following paragraphs). That is the reason that justifies my refusal to order the production of the documents in question.

5. The refusal to visit the complainant's workplace, and the suggestion that instead he provide photographs of the locations he considered relevant to the litigation

[34] As I already mentioned, the complaint is about an allegation that the respondent retaliated against the complainant by imposing discipline on him because he exercised his rights (see paragraphs 5 and 6 of the complaint). He did not explain why it was important for the Board to visit his workplace, to decide the merits of his complaint. I do not see how a site visit would help me determine the issue that is the subject of the complaint. That is why I rejected the request to visit the site, not because I was biased against the complainant, as he claimed.

[35] In any event, with the respondent's consent, I allowed the complainant to submit photos of any object or location he considered relevant to the complaint.

6. Clarifying at the pre-hearing conference that the complainant had the burden of proof

[36] It remains unclear to me how specifying that the complainant had the burden of proof could create a reasonable apprehension of bias. He was self-represented, and I clarified the issue of the burden of proof and the order of procedure to help him prepare for the hearing (see Canadian Judicial Council, *Ethical Principles for Judges*, Section 2.D.2). The fact that he disagreed with what I said about the burden of proof is not sufficient to create a reasonable apprehension of bias.

7. Serving as legal counsel to two national appeal courts

[37] The complainant's general and terse allegation, unsupported by any evidence, by which me having served as senior counsel at two national appeal courts placed me "[translation] in a situation of conflict of interest and favouritism" was intended only to frustrate the proceedings and amounts to an abuse of process (see *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112 at para. 5).

[38] The complainant adduced no evidence to rebut the presumption that all Board members act impartially (see *Oberlander v. Canada (Attorney General)*, 2019 FCA 64 at paras. 8 and 9; and *Veillette v. Chouinard*, 2013 PSLRB 61 at paras. 10 and 11).

[39] For all those reasons, I determined that a reasonably informed person who examined all the facts of this case realistically and practically would find that there was no reasonable apprehension of bias on my part toward the complainant that would justify my recusal.

B. The complainant did not present any evidence to support his complaint

[40] The complainant had the onus to establish that the complaint is founded. However, he adduced no evidence to support it. In fact, considering that the complaint did not arise from him exercising the rights provided in ss. 128 or 129 of the *Code* (the refusal to work if danger exists), he did not benefit from the presumption in his favour provided in s. 133(6). Therefore, he had the entire burden of proof (see *Vallée v. Treasury Board (Royal Canadian Mounted Police)*, 2007 PSLRB 52 at para. 65; *White v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 52 at paras. 69 to 73; and *Panesar v. Canada Revenue Agency*, 2024 FPSLREB 32 at paras. 130 and 131).

[41] Specifically, the complainant had the burden of demonstrating the following on a balance of probabilities (see *White*, at para. 73):

> a) he acted in accordance with the provisions of Part II of the *Code* or sought to ensure its application (s. 147);
> b) the respondent took an action against him prohibited by s. 147 of the *Code* (ss. 133 and 147); and
> c) there is a direct link between (a) the action taken against him and (b) him complying with the provisions of Part II of the *Code* or seeking the enforcement of any of those provisions.

[42] The complaint does not prove the allegations that it contains. The allegations must be proven by standard means of evidence, including documentary and testimonial evidence (see *Filgueira v. Garfield Container Transport Inc.*, 2006 FC 785 at paras. 13 to 15; *Gilkinson v. Professional Institute of the Public Service of Canada*, 2012 PSLRB 111 at paras. 53 to 56; *Edmunds v. Treasury Board (Correctional Service of Canada)*, 2015 PSLREB 28 at para. 38; and *Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*, 2011 PSLRB 143 at para. 17).

[43] However, the complainant did not testify, call any witnesses, or introduce into evidence any documents in his binders of documents submitted in preparation for the hearing. He did not demonstrate that the respondent retaliated against him, in contravention of s. 147 of the *Code*.

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

(The Order appears on the next page)

IV. Order

[45] The complaint is dismissed.

May 6, 2025.

FPSLREB Translation

Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board