

Date: 20250924

File: 560-26-49064

Citation: 2025 FPSLREB 120

*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

STANLEY DANIA

Complainant

and

CANADIAN ENERGY REGULATOR

Respondent

Indexed as

Dania v. Canadian Energy Regulator

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

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

For the Complainant: Tong Jun (Roger) Zhang, counsel

For the Respondent: Emmanuela Aléandre, counsel

Decided on the basis of written submissions,
filed June 20 and August 1 and 22, 2025.

REASONS FOR DECISION

I. Overview

[1] Stanley Dania filed a grievance with the Canadian Energy Regulator (CER) on November 3, 2023, alleging harassment. He was rejected on probation on November 15, 2023. He says that his rejection on probation was retaliation for having filed that harassment grievance and that this means that he was dismissed from his employment because he acted in accordance with or sought the enforcement of Part II of the *Canada Labour Code* (R.S.C., 1985, c. L-2). He filed this complaint against his dismissal.

[2] The CER raises two objections to this complaint. First, it says that the grievance was not an effort to seek the enforcement of Part II of the *Canada Labour Code*. I agree.

[3] There are different statutory regimes for employees who have been subject to a reprisal for having filed a grievance and those who have been subject to a reprisal for having exercised some right under Part II of the *Canada Labour Code*. The regime about grievances governs this dispute, not the one in the *Canada Labour Code*. Additionally, Mr. Dania filed a notice of an occurrence under Part II of the *Canada Labour Code* shortly before filing a grievance, and he does not allege that he has been subjected to a reprisal for doing that. Both Mr. Dania and the CER treated his grievance separately from his recourse under Part II of the *Canada Labour Code*; having done so, Mr. Dania cannot now treat his grievance as part of that recourse.

[4] Second, the CER says that being rejected on probation is not a dismissal for the purposes of s. 147 of the *Canada Labour Code*. I disagree. A dismissal for the purposes of s. 147 of the *Canada Labour Code* is any involuntary cessation of employment by actions of the employer. A rejection on probation is one example of a dismissal.

[5] In light of my conclusion allowing the CER's first objection, I must dismiss this complaint. My detailed reasons follow.

II. Basis of the complaint

[6] Mr. Dania was hired by the CER on November 24, 2022, in the position of director. He had a fractious relationship with his supervisor during his employment.

[7] On October 15, 2023, he filed a notice of an occurrence under s. 15(1) of the *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130; “the *WPHVP Regulations*”), alleging that his supervisor harassed him. The CER hired an outside firm to investigate that notice of an occurrence, and it completed its investigation in March 2024. The investigator found that 1 of the 11 allegations in that notice of an occurrence was founded.

[8] On November 3, 2023, he filed a grievance with the CER under s. 208 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*). That grievance listed four grounds. One was that the employer failed to provide him with a harassment-free workplace, contrary to his terms and conditions of employment, the CER workplace harassment and violence prevention policies, and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). The CER hired an external investigator, who concluded that his allegations were unfounded. Mr. Dania disputes that finding.

[9] On November 15, 2023, the CER terminated Mr. Dania’s employment. He was still in his probationary period, and the CER has characterized his termination as a rejection on probation.

[10] On February 12, 2024, Mr. Dania made this complaint under s. 133 of the *Canada Labour Code*. The complaint alleges that he was dismissed from his employment in retaliation for having sought the enforcement of a provision in Part II of the *Canada Labour Code* with respect to occupational health and safety. Specifically, he alleges that he was retaliated against for having filed the grievance dated November 3, 2023. His complaint says that “[i]n making the November 3, 2023, Grievance [sic], Mr. Dania states that he exercised his rights with respect to occupational health and safety under Part II of the Canada Labour Code ...”.

[11] Importantly, Mr. Dania’s complaint does not state that he was dismissed in retaliation for having filed the notice of an occurrence on October 15, 2023. Mr. Dania also never argues or suggests in his written submissions that he was dismissed in retaliation for having filed the notice of an occurrence. The CER speculates that this is because the supervisor who rejected him on probation did not learn about the notice of an occurrence until January 14, 2024 (i.e., months after already rejecting him on probation), and therefore, the dismissal cannot be retaliation for something that she

did not know about. This is a reasonable explanation, but it remains speculation because Mr. Dania does not explain this in his submissions.

III. Framework for a complaint based on s. 147 of the *Canada Labour Code*

[12] The Federal Public Sector Labour Relations and Employment Board (“the Board”) outlined the framework for a complaint under ss. 133 and 147 of the *Canada Labour Code* in *White v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 52 at para. 73. That framework requires the Board to answer these three questions:

- 1) Has Mr. Dania acted in accordance with Part II of the *Canada Labour Code* or sought the enforcement of any of the provisions of that Part?
- 2) Has the CER taken an action against Mr. Dania that is prohibited by s. 147 of the *Canada Labour Code*?
- 3) Is there a direct link between the action taken against Mr. Dania and the action that he took in accordance with, or his effort to enforce, Part II of the *Canada Labour Code*?

[13] At paragraph 71 of *White*, the Board clarified that the first element of the framework encompasses “... any actions taken in accordance with, or in furtherance of, Part II of the *Code*, not just those that involve the exercising of rights.”

[14] This decision is about the first two elements of that framework. If I had found in favour of the complainant on those first two elements, I would have needed to conduct an oral hearing about the third element because, unlike the first two elements, it raises questions of fact that require oral evidence and cross-examination.

[15] In other words, the two issues in this decision are as follows:

- 1) Was the grievance filed on November 3, 2023, taken in furtherance of a right in Part II of the *Canada Labour Code*?
- 2) Is being rejected on probation a dismissal for purposes of s. 147 of the *Canada Labour Code*?

[16] I will deal with both questions in that order.

IV. Issue #1: the grievance dated November 3, 2023, was not in furtherance of a right in Part II of the *Canada Labour Code*

[17] In principle, something could be an effort to seek the enforcement of Part II of the *Canada Labour Code* or an action taken in furtherance of a right in Part II without citing those provisions. However, I have concluded that an employee may not seek relief under s. 147 of the *Canada Labour Code* for having filed a grievance. I have also

concluded that on the facts of this case, the grievance filed was not in furtherance of Part II of the *Canada Labour Code*.

A. The failure to refer to Part II of the *Canada Labour Code* in the grievance is not determinative

[18] The leading authority on what constitutes an effort to seek the enforcement of Part II of the *Canada Labour Code* is *Roy v. TELUS Communications Inc.*, 2016 CIRB 822. That case was about Part II of the *Canada Labour Code* as it existed before important amendments that came into force on January 1, 2021. Before those amendments, s. 125(1)(z.16) of the *Canada Labour Code* required employers to “... take the prescribed steps to prevent and protect against violence in the work place ...”. Part XX of the *Canada Occupational Health and Safety Regulations* (SOR/86-304) in force before January 1, 2021, dealt with workplace violence. It defined “work place violence” to include “... any action, conduct, threat or gesture of a person towards an employee in their work place that can reasonably be expected to cause harm, injury or illness to that employee” (s. 20.2) and required an employer that became aware of alleged work place violence to try to resolve the matter but, if it could not, to appoint a “competent person” to investigate the alleged work place violence (s. 20.9).

[19] That system was overhauled, and a new system was put in its place, effective January 1, 2021. The *Canada Labour Code* now requires employers to “... take the prescribed measures to prevent and protect against **harassment** and violence in the work place, respond to occurrences of **harassment** and violence in the work place and offer support to employees affected by harassment and violence in the work place ...” [emphasis added] (s. 125(1)(z.16)). The *WPHVP Regulations* were enacted to protect psychological health in the workplace, including preventing and investigating allegations of harassment. A person (called the “principal party”) may complain about harassment by providing an employer or their “designated recipient” with “notice of an occurrence” of harassment (*WPHVP Regulations*, s. 15(1)). An employer or designated recipient must then attempt to resolve the complaint (*WPHVP Regulations*, s. 23(1)); if the complaint cannot be resolved, it must be investigated, if that is what the principal party still wants (*WPHVP Regulations*, s. 25(1)).

[20] As I said earlier, *Roy* was decided under the pre-2021 system. Ms. Roy made a harassment complaint using her employer’s internal harassment policy and was terminated shortly afterward. She never referred to Part XX of the *Canada*

Occupational Health and Safety Regulations in her harassment complaint. Like in this case, the Canada Industrial Relations Board (CIRB) had to decide whether her harassment complaint was a process under Part II of the *Canada Labour Code*. It concluded that it was.

[21] The CIRB went through the legislative history of workplace violence and the recent (at the time) Federal Court of Appeal decision in *Public Service Alliance of Canada v. Canada (Attorney General)*, 2015 FCA 273. After doing so, it concluded:

...

[90] The fact that Ms. Roy made no specific reference to Part XX of the Regulations is not conclusive. The Board notes that both the FC and the FCA indicated that an employer had certain obligations upon receiving a complaint. A failure to investigate a complaint cannot serve to support a defence that the employee was not specific enough to benefit from protection under Part XX of the Regulations.

[91] The FCA specifically stated that not characterizing an allegation as violence is not conclusive and that the burden on the employee in such circumstances is quite low.

...

[22] To explain the second of those paragraphs, the provisions in force at the time prohibited violence but not harassment. Harassment could be severe enough to constitute violence, but not necessarily. The CIRB was simply explaining that even though not all allegations of harassment were allegations of violence, the burden on the employee to show that the alleged harassment rose to the level of violence was quite low. That issue is no longer relevant to these types of disputes because of the 2021 amendments discussed earlier.

[23] The CIRB went on to conclude that Ms. Roy did not meet the third element of the framework I set out earlier — namely, there was no nexus between her termination and her harassment complaint.

[24] The CIRB confirmed the approach in *Roy in Bah v. Royal Bank of Canada*, 2018 CIRB 867. In that case, Ms. Bah filed a psychological harassment complaint with her employer by email. She alleged that certain incidents qualified as violence and moral harassment but did not refer to Part XX of the *Canada Occupational Health and Safety*

Regulations. The CIRB, relying on *Roy*, concluded that her internal harassment complaint was an effort to participate in a Part II *Canada Labour Code* process, stating:

...

[38] In Roy 822, the Board found that the complainant was participating in a Part II process, given the fact that her complaint referred to the impact that the harassment had on her health. Upon reading the complaint, it appears that Ms. Bah specifically complained of harassment in the workplace. She felt she was the victim of her manager's intimidation tactics and asserted that these were aimed at damaging her. She cited her medical restrictions often and stated that she feared for her health. Similarly to the decision in Roy 822, the Board finds that the psychological harassment complaint in question in this matter was part of a process covered by Part II of the Code.

...

[25] Finally, like in *Roy*, the CIRB dismissed the complaint because Ms. Bah was dismissed for reasons unrelated to her harassment complaint.

[26] The thrust of those decisions is substance over form. The CIRB was clear that it was unimportant whether a complainant cited or quoted from provisions in the *Canada Labour Code* or Part XX of the *Canada Occupational Health and Safety Regulations*. What was important was whether the complainant was addressing issues that arose in substance under those provisions. I agree with that principle.

[27] Mr. Dania also correctly points out that this principle is consistent with the wording of s. 147(c) of the *Canada Labour Code*, which prohibits a reprisal against an employee who "... has acted in accordance with this Part **or** has sought the enforcement of any of the provisions of this Part" [emphasis added]. As the Board explained in *White*, at para. 71, s. 147 of the *Canada Labour Code* "... must therefore encompass any actions taken in accordance with, or in furtherance of, Part II of the *Code*, not just those that involve the exercising of rights."

[28] Therefore, taking an action without citing Part II of the *Canada Labour Code* could be an action taken in furtherance of that Part. The fact that an employee files a document alleging harassment, instead of a formal notice of an occurrence, does not mean that they are not acting in furtherance of Part II of the *Canada Labour Code*.

B. A grievance cannot be the subject of a reprisal complaint under s. 147 of the Canada Labour Code

[29] Nonetheless, I have concluded that a grievance under s. 208 of the *FPSLRA* cannot be an action taken in accordance with or in furtherance of Part II of the *Canada Labour Code* for the purposes of s. 147 of that Act.

[30] Section 147 of the *Canada Labour Code* prohibits certain actions taken against an employee in reprisal for having acted in accordance with or sought the enforcement of Part II of the *Canada Labour Code*. Since I have not quoted it yet, it 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

...

(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 :

[...]

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

[31] However, s. 186(2)(a)(iii) of the *FPSLRA* prohibits an employer from taking certain actions against an employee in reprisal for having filed a grievance. That provision reads:

186(2) No employer ... 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

186(2) Il est interdit à l'employeur [...] 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

of employment, or intimidate, threaten or otherwise discipline any person, because the person

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 :

...

[...]

(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

(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, [...]

[32] There is a presumption against the concurrent jurisdiction of tribunals (or courts and a tribunal) over disputes. This presumption can be ousted by some positive expression of the legislature's will to grant concurrent jurisdiction over issues by different tribunals (see *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 33), but it still must be so ousted.

[33] Mr. Dania submits that the *FPSLRA* "... does not nullify the protections from another parallel statutory scheme." However, the case he cites for this proposition (*Adelberg v. Canada*, 2024 FCA 106) is about the interpretation of s. 236 of the *FPSLRA*, which expressly states that an employee must grieve instead of commencing a court action about employment issues. This case is not about the scope of s. 236 of the *FPSLRA*. Further, the exceptions to the exclusive jurisdiction of the grievance procedure apply when "... the existing [grievance] processes are demonstrably ineffective ..." (from *Ebadi v. Canada*, 2024 FCA 39 at para. 47). A complaint of a breach of s. 186(2)(a)(iii) is an effective method of redress for reprisal; further, as I will explain later, it provides a benefit to complainants that would not exist if this complaint was heard under the *Canada Labour Code*.

[34] I appreciate that the principle against concurrency is typically applied when trying to decide which of two competing forums has jurisdiction over a dispute (such as a conflict between labour arbitrators and human rights tribunals, as in *Horrocks*). In this case, by contrast, there is only one forum: the Board. The contest is between two types of complaints that both end up with the Board, instead of two types of complaints that would end up in different tribunals. However, in my opinion, the

presumption against concurrency applies equally to different types of complaints that end up at the same tribunal. Absent some indication from Parliament to the contrary, a party should not get to choose which type of complaint to file about a particular dispute; there should be one available complaint (or grievance or application) per dispute.

[35] In this case, I have concluded that a complaint about a reprisal for having presented a grievance is exclusively within the scope of s. 186(2) of the *FPSLRA*. Even though a grievance may implicate Part II of the *Canada Labour Code*, a complaint of a reprisal for having presented a grievance must be made under the enforcement rules for that provision (i.e., s. 190 of the *FPSLRA*) and not those available under the *Canada Labour Code* (i.e., s. 133).

[36] I say this for three reasons.

[37] First, there is a principle of statutory interpretation that states that “the provisions of a general statute must yield to those of a special one” in the event of a conflict between them (see *Greenshields v. The Queen*, [1958] S.C.R. 216 at 226). The *FPSLRA* is specific in applying to the federal public administration, while the *Canada Labour Code* is more generally applicable to federally regulated employers. In addition, s. 186(2)(a)(iii) of the *FPSLRA* specifically addresses reprisals for having presented a grievance, while (as I have already described) s. 147(c) encompasses a broader range of proceedings. When it comes to reprisals for having filed a grievance, the *FPSLRA* is the specific regime that ousts the general regime in the *Canada Labour Code*.

[38] Second, s. 208(2) of the *FPSLRA* prohibits an employee from presenting a grievance “... in respect of which an administrative procedure for redress is provided under any Act of Parliament ...”. The procedure for a notice of an occurrence that I described earlier is an administrative procedure provided under an Act of Parliament. If a grievance is solely about something that could be addressed through a notice of an occurrence, it may not be presented as such. The grievance has to be about something more; often, it is about a broader remedy than what is available after a notice of an occurrence. In other words, an employee may not present a grievance solely in furtherance of s. 125(1)(z.16) the *Canada Labour Code*. By definition, a grievance has to be different from (usually by being broader than) something that falls within s. 147 of the *Canada Labour Code*.

[39] Third, there are practical differences between s. 147(c) of the *Canada Labour Code* and s. 186(2)(a)(iii) of the *FPSLRA*. The most important of those differences is the burden of proof. Under s. 133(6) of the *Canada Labour Code*, the burden of proof of a violation of s. 147 rests with the complainant and shifts to the employer only if the complaint is about the exercise of a right under ss. 128 or 129 — i.e., an unsafe work refusal. Therefore, if Mr. Dania's complaint were to proceed under s. 147 of the *Canada Labour Code*, he would bear the burden to prove a direct link between his dismissal and having filed a grievance. So far, all he has shown is a suspicious timing (that his dismissal followed the grievance by 12 days). He has alleged that the letter of termination refers to the grievance as one of the reasons for rejecting him on probation, but the letter refers only to "... *unfairly accusing, in email, different people of dismissive, demeaning and grudge driven behaviour*" [emphasis added]. He alleges that this is referring to his grievance, but that line — on its face — does not mention the grievance. Mr. Dania would have to prove that it is referring to his grievance.

[40] By contrast, the burden of proof rests with the employer in a complaint about a violation of s. 186(2) of the *FPSLRA*; see the *FPSLRA*, s. 191(3). In Mr. Dania's case, had he made his complaint under s. 186(2)(a)(iii) of the *FPSLRA*, the CER would have to prove that its decision to dismiss Mr. Dania was not a reprisal for the grievance. Were I to conclude that complaints like this (i.e., a reprisal for having filed a harassment grievance) must be decided under s. 147 of the *Canada Labour Code* instead of s. 186(2)(a)(iii) of the *FPSLRA*, I would be depriving employees of that significant benefit.

[41] For these reasons, I have concluded that presenting a harassment grievance under s. 208 of the *FPSLRA* is not acting in accordance with Part II of the *Canada Labour Code* or seeking the enforcement of its provisions within the meaning of s. 147(c).

[42] I note that this result is consistent with the decision in *Idahosa v. Treasury Board (Correctional Service of Canada)*, 2024 FPSLREB 17 at para. 31, where I concluded that a workplace harassment and violence complaint is made under the *Canada Labour Code*, not the *FPSLRA*, and therefore is not the same thing as a grievance. This decision is the mirror image of that case, concluding that a grievance is presented under the *FPSLRA* and therefore is not the same thing as a workplace harassment complaint.

[43] This decision is also consistent with *Chabbert v. Canada Revenue Agency*, 2024 FPSLRB 163. In that case, a union steward received a written reprimand for contacting a potential witness to harassment in the course of representing a union member in a grievance and work place violence complaint. The Board concluded that there was an arguable case that the employer breached s. 186(2)(a)(i) of the *FPSLRA*, but there was no arguable case of a breach of s. 147 of the *Canada Labour Code* because the union steward was not acting in accordance with Part II of the *Canada Labour Code* by representing a member in a harassment grievance or work place violence complaint. *Chabbert* also shows that the unfair labour practice provisions in the *FPSLRA* are not interchangeable with complaints under the *Canada Labour Code*.

[44] While the issues in those cases were different from the issue raised in this case, they still are consistent in treating alleged retaliation for having exercised a right under the *FPSLRA* (such as filing a grievance) differently from alleged retaliation for having exercised a right related to health and safety.

C. This particular grievance is not about Part II of the *Canada Labour Code*

[45] In the alternative, should I be wrong about that conclusion, I also conclude that Mr. Dania has not acted in accordance with this Part or sought the enforcement of any of the provisions of Part II of the *Canada Labour Code* on the unique facts of this case.

[46] As I stated earlier, Mr. Dania filed a notice of an occurrence under the *WPHVP Regulations* and then filed a grievance about three weeks later. This shows that he intended to do two different things. Unlike the complainants in *Roy* and *Bah*, who simply filed harassment complaints without carefully drafting them to refer to Part II of the *Canada Labour Code*, Mr. Dania turned his mind to the issue and decided to do two separate things: file a notice of an occurrence and file a grievance.

[47] In other words, even if I am wrong, and a harassment grievance could trigger s. 147(c) of the *Canada Labour Code*, Mr. Dania's grievance did not. His grievance must be something other than a proceeding in furtherance of Part II of the *Canada Labour Code* — otherwise, he would not have presented it, and instead, he would have been satisfied with his notice of an occurrence.

[48] That the two proceedings are different is also shown by the fact that they had different outcomes. The CER hired an investigator who dismissed the 5 elements of

harassment set out in his grievance. As I said earlier, Mr. Dania disagrees with that result, but it was still the result. By contrast, the investigation into the notice of an occurrence found that 1 of the 11 allegations was founded.

[49] For these reasons, even if a harassment grievance could trigger s. 147(c) of the *Canada Labour Code*, I have concluded that it did not do so in this case.

D. This is not a technical irregularity that can be waived

[50] My conclusion means that I must dismiss this complaint because it was made under the *Canada Labour Code* instead of the *FPSLRA*. Both types of complaints are similar in that they have the same 90-day limitation period, and both are heard by the Board. The CER has also not claimed that it is prejudiced by this complaint having been made under the *Canada Labour Code* instead of the *FPSLRA*. Therefore, I considered whether this was a defect in form or a technical irregularity, so that s. 241(1) of the *FPSLRA* would apply, and I would not declare the proceeding invalid solely for this defect in form or technical irregularity. However, I have decided that s. 241(1) does not apply in this case.

[51] First, Mr. Dania never argues or suggests that making the complaint under s. 147 of the *Canada Labour Code* was a technical irregularity or defect in form. He has been represented by counsel throughout. He has decided not to grieve his termination of employment. He has not filed anything alleging a breach of s. 186(2)(a)(iii) of the *FPSLRA*. He has not made a complaint alleging reprisal for having filed his notice of an occurrence. Instead, he has decided that his case will rest solely on the basis that s. 147 of the *Canada Labour Code* applies to his grievance. He must have a good reason for adopting this strategy, and I have seen nothing from Mr. Dania indicating that he did this accidentally or in ignorance.

[52] Second, s. 147 of the *Canada Labour Code* and s. 186(2)(a)(iii) of the *FPSLRA* are similar but not identical. As I already stated, different parties have the burden of proof, depending on which provision applies. There are other differences between those provisions that are unnecessary to spell out in detail; however, the approach under the *Canada Labour Code* is set out in *White*, whereas the approach under the *FPSLRA* is set out in *Killips v. Treasury Board (Public Service Commission)*, 2024 FPSLREB 97. This is not a case in which there are no legal consequences from substituting one statutory provision for another. This is unlike in *Singh v. Deputy Head*

(*Department of Employment and Social Development*), 2024 FPSLREB 4, for example, in which referring to s. 209(1)(b) of the *FPSLRA* instead of s. 209(1)(c) was a technical irregularity because there were no consequences flowing from that decision (see paragraph 49).

V. Issue #2: A rejection on probation is a type of dismissal

[53] My decision on the first issue makes my answer on this second issue moot. However, I have decided to answer it in case my decision on the first issue is set aside on judicial review, and to provide guidance to parties facing similar issues in the future.

[54] Section 147 of the *Canada Labour Code* states that “[n]o employer shall dismiss” an employee because the employee has sought the enforcement of Part II. The CER argues that it did not “dismiss” Mr. Dania because it terminated his employment during the probationary period. The CER argues that a “rejection on probation” must mean something different from “dismiss”. It states:

...
Grammatically, rejection on probation is not enumerated in section 147. If the legislature had intended to include it in section 147, it would have done so explicitly. Any attempt to interpret “rejection on probation” as encompassed within any of the terms listed in section 147 would require reading-in [sic] a concept that is not there....
...

[55] The problem with the CER’s argument is that the phrase “rejection on probation” is a term of art, not a statutory term.

[56] The CER is a separate agency that is governed by the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*) in that it is a separate agency to which the Public Service Commission has exclusive authority to make appointments because the *Canadian Energy Regulator Act* (S.C. 2019, c. 28, s. 10) does not provide the authority for the CER to appoint employees (see the *PSEA*, s. 29(1)). Section 62 of the *PSEA* permits a deputy head to terminate the employment of an employee during a probationary period with notice or pay in lieu and stipulates that the employee ceases to be employed at the end of their notice period. It reads:

62 (1) While an employee is on probation, the deputy head of the organization may notify the employee that his or her employment will be **terminated** at the end of

(a) the notice period established by regulations of the Treasury Board in respect of the class of employees of which that employee is a member, in the case of an organization named in Schedule I or IV to the Financial Administration Act, or

(b) the notice period determined by the separate agency in respect of the class of employees of which that employee is a member, in the case of a separate agency to which the Commission has exclusive authority to make appointments,

and the employee ceases to be an employee at the end of that notice period.

Compensation in lieu of notice

(2) Instead of notifying an employee under subsection (1), the deputy head may notify the employee that his or her employment will be terminated on the date specified by the deputy head and that they will be paid an amount equal to the salary they would have been paid during the notice period under that subsection.

[Emphasis added]

62 (1) À tout moment au cours de la période de stage, l'administrateur général peut aviser le fonctionnaire de son intention de mettre fin à son emploi au terme du délai de préavis :

a) fixé, pour la catégorie de fonctionnaires dont il fait partie, par règlement du Conseil du Trésor dans le cas d'une administration figurant aux annexes I ou IV de la Loi sur la gestion des finances publiques;

b) fixé, pour la catégorie de fonctionnaires dont il fait partie, par l'organisme distinct en cause dans le cas d'un organisme distinct dans lequel les nominations relèvent exclusivement de la Commission.

Le fonctionnaire perd sa qualité de fonctionnaire au terme de ce délai.

Indemnité tenant lieu de préavis

(2) Au lieu de donner l'avis prévu au paragraphe (1), l'administrateur général peut aviser le fonctionnaire de la cessation de son emploi et du fait qu'une indemnité équivalant au salaire auquel il aurait eu droit au cours de la période de préavis lui sera versée. Le fonctionnaire perd sa qualité de fonctionnaire à la date fixée par l'administrateur général.

[57] I emphasized the word “terminated” in s. 62 to show that this is how Parliament has characterized what can happen to an employee during their probationary period. The phrase “rejection on probation” simply does not exist in the PSEA. As the Board explained in *Malik v. Deputy Head (Canada Border Services Agency)*, 2020 FPSLRB 64 at para. 15, the application of s. 62 of the PSEA “... is commonly referred to as a ‘rejection on probation’.” It is just a term of art.

[58] In essence, the CER argues that had Parliament intended a “rejection on probation” to be captured within the ambit of s. 147, it would have said so explicitly. However, Parliament never uses the phrase “rejection on probation” — not even to describe what happens to an employee who is rejected during their probationary period. It uses the word “terminate” or “termination” instead to describe the involuntary cessation of employment by the employer, whether in s. 62 of the *PSEA*, ss. 209(1)(b), (c)(i), or (d) of the *FPSLRA*, or ss. 12(1)(d) to (f) and 12(2)(c) and (d) of the *Financial Administration Act* (R.S.C., 1985, c. F-11), giving deputy heads of departments or separate agencies the power to end the employment of an employee.

[59] The only place where the term “rejection on probation” exists in statute is in ss. 150(1)(c) and 177(1)(c) of the *FPSLRA*, which state that an arbitrator cannot impose, and a public interest commission cannot recommend, a term or condition of employment that relates to staffing issues, including “rejection on probation”. Its absence elsewhere rebuts the CER’s argument that its absence in s. 147 of the *Canada Labour Code* is important.

[60] I also note that s. 211 of the *FPSLRA* states that s. 209 does not apply to “... any termination of employment under the *Public Service Employment Act* ...”. It does not say that s. 209 does not apply to a rejection on probation. If the CER were correct that the express term “rejection on probation” is required to include probationary discharges within the ambit of the general terms for the cessation of employment, this would mean that that s. 211 would not apply to a rejection on probation. Yet it does, based on the hundreds of Board decisions making that holding.

[61] Section 147 of the *Canada Labour Code* uses the word “dismiss”, not “terminate”. That is a distinction without a difference. The plain meaning of both words is the same — a cessation of employment by the employer. The *Canada Labour Code* uses both words interchangeably to refer to the same concept. It mainly uses the words to distinguish between issues arising under Division XIV (i.e., the “unjust dismissal” regime) and other divisions of Part III. However, that the words mean the same thing is evident from s. 229.1, which states, “This Division does not apply to an employee whose **termination** of employment is by way of **dismissal** for just cause” [emphasis added].

[62] In short, the term “dismiss” in s. 147 of the *Canada Labour Code* refers to all the ways in which the employment relationship is ended involuntarily by some action of the employer.

[63] I considered whether the term “lay off” in s. 147 of the *Canada Labour Code* detracts from this conclusion. A layoff occurs when an employer terminates an employee for lack of work or the discontinuance of a function (see. s. 242(3.1) of the *Canada Labour Code*). If I were correct that “dismiss” includes all involuntary terminations by the employer, then including “lay off” would be redundant. However, s. 233(a) of the *Canada Labour Code* states that the Governor in Council may make regulations “... prescribing circumstances in which a lay-off of an employee shall not be deemed to be a termination of his employment by his employer ...”. In essence, regulations can carve out certain layoffs from the meaning of “termination” (or “dismiss”) for some purposes. By including “lay off” in s. 147, Parliament has ensured that this carve-out cannot apply to health-and-safety reprisal complaints. Therefore, including “lay off” does not violate the rule against redundancy.

[64] Finally, the CER submitted that s. 147 applies only to disciplinary actions and that a rejection on probation is, by definition, non-disciplinary. I disagree. A termination can be both disciplinary and take place during the probationary period. Whether an action is disciplinary is a question of fact that depends on several factors, including the impact of the action on the employee’s career, the nature of the employee’s conduct that gave rise to the action, the nature of the employer’s response, the employer’s stated intent, whether the employee’s behaviour was culpable, and whether the employer’s intent was to correct or punish misconduct; see *Bergey v. Canada (Attorney General)*, 2017 FCA 30 at para. 37, and the cases cited in that paragraph.

[65] An employee can be rejected on probation for disciplinary reasons, because they committed misconduct. An employee can also be rejected on probation for non-disciplinary reasons like non-culpable absenteeism or non-culpable performance issues. The terms “rejection on probation” and “disciplinary” are not mutually exclusive.

[66] Whether this particular rejection on probation was disciplinary is a question of fact that cannot be resolved at this stage.

[67] Therefore, I do not need to decide the CER's interpretative argument about whether the reprisal action under s. 147 must also be disciplinary because this rejection on probation may be disciplinary.

VI. Conclusion

[68] In conclusion, Mr. Dania has not acted in accordance with Part II of the *Canada Labour Code* or sought the enforcement of any of the provisions of that Part by filing his grievance dated November 3, 2023. Therefore, I must dismiss this complaint.

[69] Had I found that he did meet that condition, I would have concluded that his rejection on probation falls within the ambit of s. 147 of the *Canada Labour Code*.

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

(The Order appears on the next page)

VII. Order

[71] The complaint is dismissed.

September 24, 2025

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