Date: 20251003

File: 561-02-52333

Citation: 2025 FPSLREB 130

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

WYLDER CARSON-AUSTIN

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Carson-Austin 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: Joanne Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Daniel Tucker-Simmons

Decided on the basis of written submissions, filed May 13 and June 13 and 26, 2025.

I. Complaint before the Board

[1] On May 13, 2025, Wylder Carson-Austin ("the complainant") made a complaint under s. 190(1)(g) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*") against the bargaining agent, the Public Service Alliance of Canada ("PSAC" or "the respondent"), alleging a breach of the duty of fair representation. At the relevant time, the complainant was a member of the Union of Canadian Transportation Employees ("UCTE"), a component of PSAC.

[2] The complaint addressed PSAC's failure to transmit a grievance to the third level in the grievance process. In summary, it alleged "… repeated instances of failed communication, unfulfilled commitments and lack of support, which constitute a violation of both the collective agreement and the union's duty of fair representation."

[3] Section 190(1)(g) of the *Act* requires the Federal Public Sector Labour Relations and Employment Board ("the Board") to examine and inquire into a complaint that an employee organization such as the PSAC committed an unfair labour practice.

[4] The nature of the duty of fair representation is set out in s. 187 of the *Act*, which reads as follows:

> ***187*** *No employee organization that is certified as the bargaining agent for a bargaining unit, and none of its officers and representatives, shall act in a manner that is arbitrary or discriminatory or that is in bad faith in the representation of any employee in the bargaining unit.*
>
> ***187*** *Il est interdit à l'organisation syndicale, ainsi qu'à ses dirigeants et représentants, d'agir de manière arbitraire ou discriminatoire ou de mauvaise foi en matière de représentation de tout fonctionnaire qui fait partie de l'unité dont elle est l'agent négociateur.*

[5] The respondent replied to the complaint, to request that the Board dismiss it on the ground that it was untimely as it was not made within the time allowed.

[6] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) permits the Board to decide "… any matter before it without holding an oral hearing." In the circumstances of this case, I am satisfied that I can decide the complaint based on the parties' written submissions.

[7] For the reasons that follow, I have determined that the complaint is untimely. Therefore, the Board has no authority to proceed, and the file will be closed.

II. Summary of events

[8] On February 14, 2022, the complainant filed a grievance concerning his suspension from work based on his non-compliance with COVID-19 workplace policies. The grievance was heard and dismissed at the first and second levels.

[9] On April 21, 2022, the complainant provided a transmittal document to the UCTE, to allow the grievance to proceed to the third level of the grievance process. On May 2, 2022, a UCTE regional vice-president advised him that it would be sent "up the UCTE chain."

[10] Emails show that the complainant requested clarification or status updates from the UCTE on several dates from May 2022 through April 2024.

[11] On April 19, 2024, the UCTE informed the complainant that PSAC's legal assessment concluded that the grievance was unlikely to be successful. Accordingly, PSAC did not support transmitting the grievance to the third level, and it proceeded no further.

[12] On April 30, 2024, the complainant responded to the UCTE, to express his surprise, and on May 6, 2024, it responded, to reiterate that the grievance was not transmitted to the third level.

[13] On May 29, 2024, the complainant contacted the UCTE, asking for clarification, given his perception of earlier assurances that the grievance would be transmitted.

[14] On August 16, 2024, the complainant wrote to the UCTE's national president, stating, in part:

> …
>
> *… While I understand that an employee does not have an automatic right to have their grievance advanced and that the union has significant discretion in deciding whether to pursue it, I do believe the union has an obligation to keep its members informed about the process, respond to queries in a timely manner, and deal in good faith.*
>
> …

III. Analysis

[15] This decision addresses solely the issue of whether the complaint was made within the time prescribed by law and, correspondingly, whether the Board has authority to hear it.

[16] Section 190(2) of the *Act* provides as follows:

> ***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.*
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> ***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.*

[17] The information provided in the parties' submissions makes it clear that by April 19, 2024, at the latest, the complainant knew that the grievance was not transmitted to the third level. The UCTE informed him of this decision in an email, and I am satisfied that this is the event that underpins the complaint. By April 19, 2024, the complainant knew or ought to have known of this decision.

[18] In *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90, the predecessor Public Service Labour Relations Board considered the application of the time limit stated in s. 190(2) and held as follows:

> …
>
> *[32] Subsection 190(2) of the* PSLRA *requires that a complaint under section 190 be filed not later than 90 days after the date on which the complainant knew or ought to have known of the circumstances giving rise to the complaint. The time limitation is mandatory, and, as has been noted consistently in the PSLRB jurisprudence, no provision in the* PSLRA *gives a panel of the PSLRB the discretion to extend it. In* Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, the Board stated as follows at paragraph 55:*
>
> > That wording is clearly mandatory by its use of the words "must be made no later than 90 days after the events in issue". No other provision of the *PSLRA* gives jurisdiction to the Board to extend the time limit prescribed in subsection 190(2). Consequently, subsection 190(2) of the *PSLRA* sets a boundary, limiting the Board's power to examine and inquire into any complaint that an employee organization has committed an unfair labour practice within the meaning

> of section 185 (under paragraph 190(1)(g)) of the *PSLRA*) and that is related to actions or circumstances that the complainant knew, or in the Board's opinion ought to have known, in the 90 days previous to the date of the complaint.
>
> *[33] In* England v. Taylor et al.*, 2011 PSLRB 129, the Board noted that the only possible discretion when interpreting subsection 190(2) of the* PSLRA *arises when determining when the complainant knew, or ought to have known, of the circumstances giving rise to the complaint. In* Boshra v. Canadian Association of Professional Employees*, 2011 FCA 98, the Federal Court of Appeal held that in order to apply subsection 190(2) to the facts of a particular case, it is necessary for the Board to determine the essential nature of the complaint and to decide when the complainant knew or ought to have known of the circumstances giving rise to it.*
>
> …

[19] The Board has been consistent in its application of *Esam* to determine the timeliness of s. 190 complaints, finding that as a general rule, it has no authority to address a complaint made outside the 90-day time limit.

[20] I am satisfied that on April 19, 2024, the UCTE expressly informed the complainant of the decision not to transmit the grievance to the third level. He then knew of the action or circumstance that gave rise to this complaint. Clearly, when he made the complaint on May 13, 2025, over a year later, it was significantly out of time.

[21] The complainant stated that he endeavoured to address the matter of his complaint internally with the UCTE through March 2025. He expressed the view that the 90-day time limit did not start until that time. However, this Board has consistently held that continuing to communicate with the bargaining agent on the same issue after the initial decision or action does not reset or restart the 90-day period. See *Vaxvick v. Public Service Alliance of Canada*, 2023 FPSLREB 14 at para. 37.

[22] I note as well the Board's decision in *Beaulieu v. Public Service Alliance of Canada*, 2023 FPSLREB 100 at para. 41, where it stated:

> *[41] I would articulate the appropriate test for relief for a failure to meet the 90-day time limit under s. 190 of the* Act *as follows: the Board may consider relieving a party from its failure to comply with the 90-day deadline to make a complaint if there was a good cause for the delay that could have been neither anticipated nor controlled. As noted, this implicit power is to be exercised only in exceptional or unusual circumstances.*

[23] However, the submissions before me reveal no circumstances that suggest an exception to the general rule set out in *Esam*. Further, in *Beaulieu v. Public Service Alliance of Canada*, 2025 FCA 59, the Federal Court of Appeal held at para. 29, "… many self-represented litigants are unfamiliar with Board and court processes, but an unfamiliarity with an available avenue of legal recourse is not an exceptional or unusual circumstance justifying an extension of time."

[24] The complainant remained obligated to make his complaint within 90 days of when he knew or ought to have known of the decision not to transmit his grievance to the third level, and he did not. As the complaint was not made within the 90-day time limit, it is not timely. Therefore, the Board has no authority to consider its merits.

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

(The Order appears on the next page)

IV. Order

[26] The complaint was made out of time and is dismissed.

October 3, 2025.

Joanne Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board