Date: 20250919

File: 561-23-49002

Citation: 2025 FPSLREB 115

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

FABIOLA ROLAN PINHEIRO

Complainant

and

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Respondent

Indexed as
Pinheiro v. Professional Institute of the Public Service of Canada

In the matter of a complaint made under section 190 of the *Federal Public Sector Labour Relations Act*

Before: Brian Russell, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Fiona Campbell, counsel

Decided on the basis of written submissions, filed February 23 and 28 and November 4 and 19, 2024.

REASONS FOR DECISION

I. Complaint before the Board

[1] The complainant, Fabiola Rolan Pinheiro, was a principle analyst classified at the RE-05 group and level. She worked for the Office of the Superintendent of Financial Institutions ("the employer").

[2] On February 5, 2024, the complainant made this complaint against the Professional Institute of the Public Service of Canada ("the respondent"), alleging that it violated s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which is about unfair representation by a bargaining agent.

[3] The complaint is lengthy and includes a detailed chronology of events leading to its making. I will not reproduce it in full but will summarize its essential elements.

[4] The complainant alleges the following:

- between September 5 to 8, 2023, her bargaining agent representative contributed to the termination of her employment, and, during the period of September 5, to January 26, 2024, had she received different or at least more transparent and forthcoming advice, she would have proceeded differently and would have obtained better outcomes;
- between September 5, 2023, and January 26, 2024, her representative did not sufficiently investigate her case or adequately and reasonably represent and consider her interests before or after her termination;
- between September 5, 2023, and January 26, 2024, her concerns were willfully ignored, strategies were changed arbitrarily, and her representative was not transparent and forthcoming and was hostile in communications;
- between November 6, 2023, and January 26, 2024, arbitrary deadlines were imposed on her for responses, even though the respondent often delayed its deadlines;
- the respondent acted in a manner that was arbitrary and that is prohibited under s. 187 of the *Act*; and
- she is not privy to the respondent's motives and she cannot verify whether it acted in bad faith and intended to discriminate against her but, she asserted that its conduct had these adverse consequences:
  - her unjust termination after it became involved,
  - it failed to report workplace harassment, and
  - a delay occurred scheduling a hearing and obtaining an outcome for her grievances.

[5] The complainant clarified in her written submissions, dated February 26, 2024, that she believed that the respondent acted in a manner that was discriminatory and in bad faith.

[6] As corrective action, she seeks reinstatement in her position, with compensation for lost wages.

[7] The respondent made preliminary objections on the basis that the complaint was made outside the 90-day time limit set out in the *Act* and that it does not disclose a *prima facie* breach of the *Act*. It submits that the complaint should be summarily dismissed, without a hearing.

[8] Section 190(1)(g) of the *Act* requires that the Federal Public Sector Labour Relations and Employment Board ("the Board") examine and inquire into any complaint that an employee organization committed an unfair labour practice. Under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board "… may decide any matter before it without holding an oral hearing."

[9] The Board informed the parties that it would address the respondent's preliminary objections based on written submissions, and it invited them to make additional submissions. They were informed that once the Board received their submissions, it could either schedule the complaint for an oral hearing or dismiss it, based on the submissions, and the file would then be closed. I am satisfied that the parties' written submissions provide me with enough information to deal with the objection, without holding an oral hearing.

[10] For the reasons that follow, I conclude that the allegation that the respondent contributed to the termination of her employment is untimely. All her other allegations are timely. I also conclude that the complainant did not make an arguable case that the respondent breached s. 187 of the *Act*, and I dismiss her complaint.

II. Summary of the facts

[11] Both the complainant and the respondent provided detailed summaries of the events that led to the complaint being made, which are summarized in this decision.

[12] The complainant's employment with the employer began on October 3, 2022. She was subjected to a probationary period of one year, to September 29, 2023.

[13] In late August 2023, the complainant contacted Natasha Chartier, an employment relations officer with the respondent, about issues that she perceived with her employer. They included management changes, changing goals and job duties,

harassment and discrimination, performance reviews that she believed were unfair and unreasonable, and the possibility that she would be rejected on probation.

[14] Between late August and late September 2023, the complainant and the respondent discussed the situation and a strategy for moving forward. They agreed to focus on preventing the rejection on probation by concentrating on providing the employer with feedback on her six- and nine-month performance reviews. They provided feedback and advised the employer that grievances would be filed if both reviews were not amended.

[15] The complainant was rejected on probation on September 28, 2023.

[16] On October 6, 2023, with the respondent's help, the complainant filed three grievances about the following:

- Grievance for wrongful termination ("the rejection on probation grievance").
- Grievance for 6-month probation review (together, this and the next paragraph describe "the performance review grievances").
- Grievance for 9-month probation review.

[17] In mid-October 2023, the employer contacted the respondent and asked whether the rejection-on-probation grievance could be held in abeyance until the performance review grievances were heard.

[18] Between late October and November 2023, the complainant and the respondent had discussions and exchanged emails about how to proceed with the three grievances. It proposed a strategy and then outlined the next steps, which she agreed to. Specifically, they agreed that they would proceed with the rejection-on-probation grievance and hold the performance review ones in abeyance. The strategy was subject to the employer's agreement.

[19] On November 8, 2023, the respondent contacted the employer to schedule a hearing for the rejection-on-probation grievance by December 8, 2023; otherwise, it would refer the grievance to adjudication.

[20] The employer scheduled the final-level grievance hearing for the rejection-on-probation grievance for December 7, 2023. The respondent scheduled a meeting with the complainant for November 30, 2023, to prepare for the hearing.

[21] On December 4, 2023, Ms. Chartier advised the complainant that she had been on leave due to an illness, she was recovering and suggested rescheduling the December 7, 2023, final-level grievance hearing to give her more time to prepare. Ms. Chartier also advised the complainant that the employer did not agree to hold the performance review grievances in abeyance and indicated that it wanted to proceed with grievance hearings for both of them before the rejection-on-probation grievance. The complainant asked Ms. Chartier whether it was possible to proceed with the rejection-on-probation final-level grievance hearing by herself, without Ms. Chartier, or with another representative.

[22] The next day the complainant and Ms. Chartier's manager exchanged emails about the possibility of the complainant proceeding with the grievance by herself, without Ms. Chartier, or with another representative. Ms. Chartier's manager advised the complainant the December 7, 2023, grievance hearing would have to be rescheduled for two reasons.

[23] First, it was not possible to proceed with the grievance by herself because the respondent was a signatory to the grievance and the hearing was at the final level. Second, it was not possible for another representative to attend because it was short notice, and they were booked with other members.

[24] The December 7, 2023, grievance hearing for the rejection-on-probation grievance was cancelled because Ms. Chartier was sick and needed more time to prepare for the hearing.

[25] Between December 8, 2023, and January 26, 2024, the respondent and the complainant had several email exchanges about rescheduling the hearing. The complainant was concerned with delaying it.

[26] The respondent and the complainant tried to identify dates for grievance hearings in early January 2024. They discussed options to move the three grievances forward and a recommended strategy for them to be heard together at the final level of the grievance procedure. The respondent also suggested that if the employer was unwilling to agree to the recommended strategy, then it would request grievance responses from the employer at the first and second levels for the performance review grievances, without holding a hearing. That would have led to all three grievances being heard at the final level at the same time.

[27] The complainant did not agree with the respondent's proposed strategy for the three grievances. She wanted the rejection-on-probation grievance heard and the performance review grievances held in abeyance, as the respondent suggested in the fall of 2023, despite the employer's position to proceed with the performance review grievances first.

[28] In an email dated February 2, 2024, the respondent forgot that the complainant's grievances alleged retaliation by the employer and that she experienced harassment. In an email dated February 7, 2024, the respondent admitted to the error, apologized, and advised her as to how best to proceed with her three grievances.

[29] On February 5, 2024, the complaint was made with the Board.

[30] In their submissions, the parties provided the Board with information on events that took place after the complaint was made. It will not be considered because those events took place too late.

III. Summary of the arguments

A. Timeliness

1. For the respondent

[31] The respondent argues that a complaint must be made no later than 90 days after the date on which the complainant knew or ought to have known of the action or circumstances that gave rise to the complaint. It submits that the Board has consistently held that the time limit is mandatory and that there is no discretion to extend it (see *Pruden v. Public Service Alliance of Canada*, 2017 PSLREB 24; *Esam v. Public Service Alliance of Canada (Union of National Employees)*, 2014 PSLRB 90 at para. 32; and *Boshra v. Canadian Association of Professional Employees*, 2009 PSLRB 100).

[32] According to the respondent, the complaint was made on February 5, 2024; therefore, events that took place before November 7, 2023, should not be considered. The respondent argues that only allegations related to actions that were known or ought to have been known by the complainant in the 90 days prior to the filing of the complaint, on or after November 7, 2023, are properly before the Board.

2. For the complainant

[33] The complainant argues that her complaint was made within the time limit outlined in the *Act*. She argues that section 190(2) of the *Act* limits the time that complaints can be made to the Board, but not the extent of evidence that can be used. She argues that the alleged actions of the respondent took place from August to November 2023 and excluding them would unjustly favour the respondent and prejudice her case because it would exclude significant evidence of wrongdoing, especially as it pertains to her termination of employment. She argues that her complaint is timely and that the respondent's argument that allegations related to actions that were known or ought to have been known in the 90 days prior to the filing of her complaint, is not prescribed or justified under section 190(2) of the *Act*.

B. Arguable case

1. For the respondent

[34] The respondent argues that the complaint does not disclose a *prima facie* breach of the *Act* and that the Board should exercise its discretion and dismiss it summarily.

[35] According to the respondent, in its previous decisions, the Board has held that a complaint can be dismissed if the complainant fails to establish, on a *prima facie* basis, how its allegations relate to each of ss. 190(1)(a) through (g) of the *Act*. See *Exeter v. Canadian Association of Professional Employees*, 2009 PSLRB 14 at para. 14; *Russell v. Canada Employment and Immigration Union*, 2011 PSLRB 7 at para. 48; and *Barrett v. Canadian Association of Professional Employees*, 2023 FPSLREB 66 at paras. 69 and 70.

[36] The respondent argues that the complainant is not alleging bad faith or discrimination concerning its conduct but, alleges that it acted arbitrarily.

[37] According to the respondent, in addition to the facts that the complainant pled, the Board may consider any undisputed facts that the parties provided during the intake process as part of its analysis; see *Corneau v. Association of Justice Counsel*, 2023 FPSLREB 16 at paras. 26 and 27.

[38] The respondent acknowledges that it has the initial burden of establishing that the complainant has not made an arguable case of a breach of s. 187 of the *Act* based

on the undisputed facts. However, she must "… specify the factual allegations on which the complaint is based and address the issues alleged to constitute a breach of the duty of fair representation …" (from *Payne v. Public Service Alliance of Canada*, 2023 FPSLREB 58). Also, her factual allegations cannot consist of arguments or vague allegations.

[39] The respondent argues that without foundation, the complainant alleges that its involvement in her case contributed to the termination of her employment because in her complaint, she set out a distorted account of the events that took place when she selectively quoted certain emails and ignored other, key emails. It submits that it is important to consider the more complete picture of facts set out in its submissions.

[40] The respondent contends that it was very thorough in its representation of the complainant. It communicated extensively with her throughout the process and was responsive to her concerns. It explained the rationale behind changing strategies and advised her that she could stay with the original strategy. According to it, changing strategies does not amount to arbitrary conduct.

[41] The respondent submits that the mistake it made with respect to the grievances and the retaliation and harassment allegations was minor and that it did not prejudice the complainant. According to the respondent, the mistake did not amount to arbitrary conduct.

[42] The respondent argues that the complainant's allegation that its involvement contributed to the termination of her employment is speculative and does not have an "air of reality"; see *Payne*.

[43] The respondent argues that it moved the complainant's grievances quickly through the grievance procedure and that the hearing scheduled for December 7, 2023, had to be cancelled due to Ms. Chartier's illness. According to it, most of the delay scheduling a new hearing since December 7, 2023, has been because of the complainant's questions about the strategy change. It submits that the case's pace of progress is not arbitrary conduct.

2. For the complainant

[44] The complainant argues that she made a *prima facie* case that the *Act* was breached. The respondent's submissions conveniently omitted and distorted facts to

suit its narrative, and she highlighted events that were arbitrary, discriminatory, and in bad faith on its part.

[45] She alleges the following:

- The respondent failed to report workplace harassment multiple times, both before and after she was rejected on probation.
- Its involvement led directly to her termination.
- It was selective with the information that it chose to share with her.
- It forgot basic elements of her case (allegations of retaliation and discrimination and personal harassment in her grievances).
- It delayed scheduling the hearing of her rejection-on-probation grievance, changed strategies, and refused to explain its reasoning behind the changes.
- It failed to consider the effect of its actions on her.

IV. Reasons

A. Timeliness

[46] Section 190(2) of the *Act* establishes a 90-day deadline to make a complaint. It says that a complaint must be made no later than 90 days after the date that the complainant knew or ought to have known, of the action or circumstances giving rise to it.

[47] The complaint was made on February 5, 2024. In this case, 90 days before the date on which it was made was November 7, 2023. Allegations about incidents before that date are outside the 90-day deadline. The complainant was rejected on probation on September 28, 2023. The allegation that the respondent contributed to the termination of her employment was made outside the time limit.

[48] I find that the remainder of the complaint was made within the 90-day time limit.

[49] The allegations are as follows:

- had she received different or at least more transparent and forthcoming advice, she would have proceeded differently and would have obtained better outcomes;
- the complainant's bargaining agent representative did not sufficiently investigate her case or adequately and reasonably represent and consider her interests after her termination;
- her concerns were willfully ignored, strategies were changed arbitrarily, and her bargaining agent representative was not transparent and forthcoming and was hostile in communications;

- arbitrary deadlines were imposed on her for responses, even though the respondent often delayed its deadlines; and
- its conduct had the following adverse consequences:
  - it failed to report workplace harassment, and
  - a delay occurred scheduling a hearing and obtaining an outcome for her grievances.

B. Arguable case

[50] Section 187 of the *Act* says that a bargaining agent and its officers cannot act in a manner that is arbitrary or discriminatory or that is in bad faith when representing an employee in the bargaining unit.

[51] To demonstrate an arguable case the complainant's allegations must show that the respondent acted "… in a manner that is arbitrary or discriminatory or that is in bad faith…" in its representation of the complainant. See *Tibilla v. Public Service Alliance of Canada*, 2021 FPSLREB 118 at para 26; and *Andrews v. Public Service Alliance of Canada*, 2021 FPSLREB 141 at para 28.

[52] To determine whether there is an arguable case the Board asks: if it takes all the facts alleged in the complaint as true, is there an arguable case that the respondent contravened section 187 of the *Act*? See *Quadrini v. Canada Revenue Agency*, 2008 PSLRB 37 at para. 32; and *Hughes v. Department of Human Resources and Skills Development*, 2012 PSLRB 2 at para. 86.

[53] To dismiss a complaint for lack of an arguable case the alleged facts, if accepted as true, must be absent or insufficient to demonstrate an arguable case of a breach of the duty of fair representation.

[54] The respondent takes the position that the complainant did not successfully demonstrate an arguable case, and I agree. The facts that the parties presented are not in dispute. *Corneau* at paras. 26 and 27, says that facts that are not in dispute that are provided during the intake process may be relied upon to show that an arguable case was not made.

[55] The complainant alleges that the respondent actions were arbitrary, discriminatory and in bad faith because it did not represent or consider her interests adequately or reasonably; acted in an arbitrary manner by ignoring her concerns, changing strategies, not being transparent, communicating in a hostile manner, and

imposing arbitrary deadlines; failed to report workplace harassment; and delayed scheduling a grievance hearing.

[56] After reviewing approximately 600 pages of the parties' submissions, I find that the complainant did not make an arguable case that the respondent acted in a manner that was arbitrary, discriminatory or in bad faith. It proposed a strategy to move the complainant's grievances forward that was subject to the employer agreeing to hold the performance review grievances in abeyance. When the employer decided that it would not agree to do that, the respondent proposed other options several times. It is clear from the documentation that the parties provided that the complainant wanted a particular course of action and that she would not agree to anything but that course.

[57] The Board has consistently held that a complainant's unhappiness or disagreement with how a bargaining agent handled a grievance is not enough to demonstrate a breach of the *Act*. See *Gonzague v. Professional Institute of the Public Service of Canada*, 2024 FPSLREB 38 at para. 62; *Andrews v. Public Service Alliance of Canada*, 2021 FPSLREB 141 at para. 29; *Sganos v. Association of Canadian Financial Officers*, 2022 FPSLREB 30 at para. 102; and *Burns v. Unifor, Local 2182*, 2020 FPSLREB 119 at para. 77.

[58] The Board's role is also not to second-guess a bargaining agent. The duty of fair representation does not require a bargaining agent to take its members' directions when it decides which grievances to pursue or settle and when to negotiate extensions of time. See *Bahniuk v. Public Service Alliance of Canada*, 2007 PSLRB 13 at para. 69.

[59] The respondent was also diligent in its efforts to propose options to the complainant, and it recommended a strategy to proceed with her three grievances. I was not presented with alleged facts that if accepted as true demonstrate that it did not represent or consider her interests adequately or reasonably; that it acted in an arbitrary manner by ignoring her concerns, changing strategies, not being transparent, communicating in a hostile manner, and imposing arbitrary deadlines; that it failed to report workplace harassment; and that it delayed scheduling a grievance hearing.

[60] The respondent admitted that it forgot some basic elements of the complainant's case (allegations of retaliation and discrimination and personal harassment in her grievances). Forgetting basic elements of a grievance while processing a case does not breach the duty of fair representation. These basic errors

do not disclose an arguable case. See *Noël v. Société d'énergie de la Baie James*, 2001 SCC 39 at para. 51; and *Xu v. Public Service Alliance of Canada*, 2020 FPSLREB 62 at para. 20.

[61] I was not provided with any alleged facts that if accepted as true could demonstrate that the respondent acted in a way that demonstrated personal hostility, political revenge, or dishonesty toward the complainant; that it treated her unequally, based on personal favouritism or a ground prohibited by the *CHRA*; or that it disregarded her interests in a perfunctory manner (that it lacked interest or enthusiasm). See *Canadian Merchant Service Guild v. Gagnon* [1984] 1. S.C.R. 509 at page 520.

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

(The Order appears on the next page)

V. Order

[63] The complaint is dismissed.

September 19, 2025.

Brian Russell,
a panel of the Federal Public Sector
Labour Relations and Employment Board