Date: 20250925

File: 560-02-50877

Citation: 2025 FPSLREB 125

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

DAVID GILDING

Complainant

and

TREASURY BOARD
(Canada Border Services Agency)

Respondent

Indexed as
Gilding v. Treasury Board (Canada Border Services Agency)

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

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Himself

For the Respondent: Maritza Woël, counsel

Decided on the basis of written submissions, filed February 21 and March 30 and April 14, 2025.

I. Summary

[1] David Gilding ("the complainant") made a complaint alleging that the respondent, the Canada Border Services Agency (CBSA), acted contrary to ss. 133 and 147 of the *Canada Labour Code* (R.S.C., 1985, c. L-2; *CLC*) when it removed his defensive equipment after he had exercised his rights under s. 147 of the *CLC*.

[2] The respondent raised a preliminary objection, arguing that the complaint is untimely and that it should be dismissed without holding a hearing. It was made beyond the mandatory 90-day limitation period to make a reprisal complaint with the Federal Public Sector Labour Relations and Employment Board ("the Board"), as set out at s. 133(2) of the *CLC*. This mandatory deadline cannot be extended.

[3] The complainant does not contest the fact that the complaint was made after the 90-day period expired. However, he asserts that the 90-day limit should not have been calculated as running until he became aware of his right to recourse, after which he claims he made this complaint within that 90-day period. He alternatively submits that the respondent's reprisal against him is ongoing such that his complaint was made properly within the 90-day deadline.

[4] The objection is granted, and the complaint is dismissed, as it was made months past the 90-day deadline established by Parliament. The time limit does not begin to run once a complainant learns of their right to recourse. And the evidence does not support finding that the alleged reprisal acts are ongoing.

II. Analysis and reasons

A. Did the 90-day time limit begin to run once the complainant became aware of his rights?

[5] No, the 90-day time limit did not begin to run once the complainant became aware of his rights. The Board has considered this argument, and the law is well settled that not knowing of the right to recourse does not delay starting the 90-day deadline to make a complaint. (*Muise v. Treasury Board (Department of Public Works and Government Services)*, 2024 FPSLREB 128). Section 133(2) of the *CLC* states:

> ***Time for making complaint***
>
> ***133(2)*** *The complaint shall be made to the Board not later than ninety 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.*

[6] I note that in the written submissions supporting this proceeding, the complainant does not contest the fact that his complaint was made after the expiry of the 90-day period that began to run when he found out or ought to have known of the alleged act of reprisal that he alleges was the respondent's decision to remove his defensive tools from him.

[7] The Board addressed the question of law that the complainant argues as to his lack of knowledge of his right to recourse in *Hérold v. Public Service Alliance of Canada*, 2009 PSLRB 132, in which it stated as follows:

> *14 The complainant states that she did not learn until February 27, 2009 that she could make a complaint and, in her words, "[translation] seek action against her bargaining agent." The complainant's ignorance of the existence of her rights may not be invoked to set aside the time limits imposed by the* Act.…

[8] That Board stated this in *Cuming v. Butcher*, 2008 PSLRB 76:

> *[43] The legislation does not state that the starting point of the 90-day time limit to file a complaint starts on the date on which a person is informed of the existence of a possible recourse under the* Act. *The* Act *states that a complaint must be made "not later than 90 days after the date on which the complainant knew … of the action or circumstances giving rise to the complaint …." …*

[9] I note that the complainant's argument on this point of law was not supported by any accompanying cases.

[10] I see no reason to depart from those past decisions and for the same reasons reject the claim that a lack of knowledge of a right to recourse delayed running the time to make a complaint.

B. Is the alleged reprisal action ongoing such that the 90-day deadline to make the complaint would not have applied?

[11] No, the alleged reprisal is not ongoing such that the 90-day deadline would not have applied. While the complainant alleges that he suffered harm from having his defensive tools removed and from the related losses, such as overtime opportunities, it arose from one decision.

[12] The complainant submits that the alleged act of reprisal is ongoing. Therefore, the deadline to make a complaint was not as the respondent asserts. He argues is that

it would be unreasonable and unfair to fix a deadline for an ongoing reprisal at the first incident or event of the reprisal.

[13] Otherwise, he argued, it would create a situation in which an employer could continue with its reprisals, unfettered, if a complainant is unaware of their right to make a complaint, unwilling to make one, or does not make one within 90 days of the first event or of the ongoing reprisal.

[14] The respondent cited *Gupta v. Canada (Attorney General)*, 2015 FC 535, as an authority to support its argument that the facts before me do not set out a continuing reprisal. That case is not relevant, as it considers a different statutory scheme and does not specifically address the quality of an ongoing reprisal.

[15] I note the analysis on the point of an alleged continuing grievance provided in *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93:

> *[35] The arbitrator in* British Columbia v. B.C.N.U. *(1982), 5 L.A.C. (3d) 404, relied on the definition of a continuing grievance in …* Canadian Labour Arbitration*, at page 35, as follows:*
>
> > …The recurrence of damage will not make a grievance a continuing grievance….
>
> *[36] In* Ontario Public Service Employees Union v. Ontario (Ministry of the Attorney General)*, 2003 CanLII 52888 (ON GSB), the arbitrator posed the question to be answered as follows: "Does it [the grievance] involve a continuing course of conduct rather than one action which happens to have continuing consequences?"*

[16] In *Bowden*, the Board also cites with approval *Fontaine v. Treasury Board (Canada Border Services Agency)*, 2012 PSLRB 39, as follows:

> *24* Canadian Labour Arbitration *at paragraph 2:3128 defines a "continuing grievance" as follows :*
>
> > *…In any event, the test most commonly used in determining whether there is a continuing violation is the one derived from contract law, namely, that* ***there must be a recurring breach of duty, and not merely recurring damages.***
>
> [Emphasis added]

[17] In the facts before me, the 90-day time limit that began to run with the decision or knowledge that caused the removal of the grievor's defensive tools serves to promote the timely and efficient resolution of workplace disputes.

[18] That in turn allows the parties greater opportunity to recover relevant evidence, including identifying and interviewing potential witnesses. All these interests suffer with the passage of time, as would occur if I accepted the complainant's submissions that his ongoing alleged harm of still not being allowed to wear his defensive tools constitutes an ongoing act of reprisal.

[19] Consistent with the authorities that I cited, I find that the complainant's continued lack of defensive tools is recurring damage and not a recurring reprisal.

[20] As such, the evidence established that this complaint was made beyond the 90-day period required by the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and is therefore untimely. It is dismissed.

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

(The Order appears on the next page)

III. Order

[22] I order the complaint dismissed.

September 25, 2025.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board