Date: 20251127

File: 561-02-52640

Citation: 2025 FPSLREB 159

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

ITYODOO NDUR

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as
Ndur v. Canadian Association of Professional Employees

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: Himself

For the Respondent: Khristian Khouri and Jennifer George, counsels

Decided on the basis of written submissions, filed June 27, August 12 and 18, and September 15, 2025.

REASONS FOR DECISION

I. Complaint before the Board

[1] Ityodoo Ndur ("the complainant") made this complaint against the Canadian Association of Professional Employees ("the respondent") on June 27, 2025, and amended it on August 12, 2025. He alleged that on June 5, 2025, the respondent 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.

[2] The complainant worked for the Treasury Board of Canada Secretariat ("the employer"). He alleges that his elimination from a staffing process and the end of his employment, in 2022, by his employer were the result of an underlying pattern of behaviour by the respondent. He alleges that the respondent did not disclose collective agreement violations in 2022 and in 2024 that could have been grieved. This led to him making this complaint in June 2025, when he understood the alleged violations and communicated his understanding of them to the respondent.

[3] As corrective action, he requests that the respondent be ordered to represent his grievance at the final level, to address the newly discovered violations of the collective agreements between the Treasury Board and the Canadian Association of Professional Employees for the Economics and Social Science Services group (expiry dates June 21, 2022, and June 21, 2026; "the collective agreement") that occurred in 2022 and that directly contributed to the termination of his employment.

[4] The respondent made preliminary objections on the basis that the complaint was made outside the 90-day time limit set out in the *Act*, that the complainant made it without standing, and that it does not disclose a *prima facie* violation of the *Act*.

[5] 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 made to it 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."

[6] I reviewed the parties' submissions, and I am satisfied that they provide me with enough information to decide the respondent's objections, without holding an oral hearing.

[7] For the following reasons, I find that the complaint was made outside the 90-day time limit set out in the *Act*, and I dismiss it. There is no need for me to decide whether it discloses an arguable case.

II. Background

[8] On November 12, 2019, the complainant went on leave for medical reasons.

[9] On December 9, 2021, the complainant received a letter from the employer (an "options letter") outlining these three options about his leave situation:

1) he could resign or retire;
2) he could retire on medical grounds; or
3) the employer would terminate his employment for reasons other than breaches of misconduct or discipline, if he did not choose either of the other two options.

[10] The next day, the complainant advised his employer that he wanted to begin the return-to-work process. Later that month, it requested that he undergo a fitness-to-work evaluation before he returned to work.

[11] The complainant underwent the evaluation in March 2022, and a report was prepared. He met with the employer three times in April 2022, to discuss the evaluation and his return-to-work plan. A representative of the respondent attended two of the three meetings. After the third meeting, the employer advised the complainant that it did not believe that the meetings were productive.

[12] In early May 2022, the complainant was scheduled to attend mediation with a respondent representative for a staffing complaint that he made against the employer. During the mediation, the employer made an offer that the respondent considered reasonable. The complainant declined the employer's offer and requested remedies that the respondent believed were practically impossible to achieve. The respondent explained its position to the complainant. The employer withdrew from mediation.

[13] In mid-May 2022, the respondent advised the complainant that it was withdrawing its representation of him for the staffing complaint and how to proceed

with his staffing complaint on his own. It also advised him that if he disagreed with its decision, he could submit a complaint with it or pursue recourse under the *Act*, but that he was responsible for meeting the applicable deadlines.

[14] Between late May and early June 2022, the complainant contacted the respondent twice, to ask about making a complaint against it. It advised him that he could submit a complaint with it or pursue recourse under the *Act*.

[15] On August 3, 2022, the employer sent the complainant a second options letter that outlined the same three options as did the first options letter. He shared the letter with the respondent and asked for help filing a grievance.

[16] On August 16, 2022, the respondent advised the complainant that it would not support a grievance about the second options letter because the employer had concerns about his safety and security.

[17] On August 26, 2022, the respondent reiterated its position about filing a grievance about the second options letter. It advised the complainant that if he disagreed with its decision, he could submit a complaint with it. It also advised him that he could file a grievance on his own.

[18] On September 9, 2022, the complainant advised the employer that he chose to medically retire. He advised the respondent of his decision the same day.

[19] In early October 2022, the complainant and the respondent exchanged emails about its decision not to file a grievance about the second options letter on his behalf. It repeated the position that it had explained to him in August 2022.

[20] The complainant's medical retirement took effect in December 2022.

[21] In October 2024, the complainant contacted the respondent because he wanted to discuss issues about the employer not disclosing its duty to accommodate him during the period from December 2021 to December 2022. The respondent advised him that it would not represent him because he was no longer a member of the bargaining unit and because of its withdrawal of his representation in 2022. He also contacted the Board about making a complaint against the respondent.

[22] In early June 2025, the complainant contacted the respondent, seeking its support to represent him for his staffing complaint and his second options letter of August 2022. It advised him that it would not provide representation for him.

[23] The complainant made this unfair representation complaint with the Board on June 27, 2025.

III. Reasons

A. The complaint is untimely

[24] I reviewed the parties' submissions, and I conclude that the complaint is untimely.

[25] The complainant argues that his complaint is timely. He contends that the respondent did not disclose that the employer's failure to accommodate him represented a violation of the collective agreements and the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; *CHRA*). He submits that he discovered the violation through his own research in October 2024.

[26] He indicates June 5, 2025, as the date that he became aware of the act giving rise to the complaint. He argues that the "triggering event" was his email to the respondent in June 2025, in which he communicated his understanding that he could grieve violations of his collective agreement and the *CHRA*.

[27] The respondent argues that the complaint should be dismissed because it is untimely. It argues that s. 190(2) of the *Act* requires that complaints against a bargaining agent be made within 90 days after the date that the complainant knew or ought to have known of the action or circumstances giving rise to the complaint.

[28] It argues that the complaint contains allegations dating back to 2022, which is outside the 90-day deadline. It also argues that in 2022, the complainant was twice advised of his right to make a complaint with the Board.

[29] The respondent argues that even if the Board were to find that October 2024, was the date on which the complainant knew or ought have known about the facts giving rise to the complaint, because that was when it advised him that it would not provide representation for him and he contacted the Board about making a complaint

against it, his complaint would still be outside the 90-day deadline because it was made in June 2025.

[30] Finally, it argues that the deadline in the *Act* is strict and cannot be extended. It cites *Mongeon v. Professional Institute of the Public Service of Canada*, 2022 FPSLREB 24, and *Castonguay v. Public Service Alliance of Canada*, 2007 PSLRB 78, to support its position.

[31] The 90-day time limit does not begin to run once a complainant becomes aware of their right to recourse (see *Gilding v. Treasury Board (Canada Border Services Agency)*, 2025 FPSLREB 125 at para. 5). The lack of knowledge of a right to recourse does not set aside the time limits imposed by the *Act* (see *Hérold v. Public Service Alliance of Canada*, 2009 PSLRB 132 at para. 14).

[32] The starting point of the 90-day time limit is not the date that the complainant becomes informed of the possible recourse under the *Act*. A complaint must be made no later than 90 days after the complainant knew or ought to have known of the action or circumstances giving rise to the complaint (see *Cuming v. Butcher*, 2008 PSLRB 76 at para. 43).

[33] The complaint was made almost 3 years after the complainant was advised of his right to make one with the Board. The respondent also advised him that he was responsible for meeting the applicable deadlines. Unfortunately, he did not meet the 90-day time limit set out in the *Act*.

[34] The case law states that the time limit to make a complaint can be extended in very exceptional and limited situations, when the Board is convinced that the complainant could have neither anticipated nor controlled the cause of the delay because of an extraordinary event that was out of the control of the party that missed the time limit. See *Beaulieu v. Public Service Alliance of Canada*, 2023 FPSLREB 100 at paras. 38 to 41, which uses terms like “accident”, “force majeure”, and “Act of God”.

[35] A self-represented litigant’s unfamiliarity with an available avenue of legal recourse is not an exceptional situation that justifies granting an extension of time (see *Beaulieu v. Public Service Alliance of Canada*, 2025 FCA 59 at para. 29).

[36] The parties’ submissions do not demonstrate that the time limit to make this complaint should be extended.

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

(The Order appears on the next page)

IV. Order

[38] The respondent's timeliness objection is granted.

[39] The complaint is dismissed.

November 27, 2025.

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