Date: 20251208

File: 561-02-52015

Citation: 2025 FPSLREB 164

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

KALEY HOGAN

Complainant

and

PUBLIC SERVICE ALLIANCE OF CANADA

Respondent

Indexed as
Hogan v. Public Service Alliance of Canada

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

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Complainant: Herself

For the Respondent: Wael Afifi, Public Service Alliance of Canada

Decided on the basis of written submissions, filed March 26 and October 2, 2025.

REASONS FOR DECISION

I. Introduction

[1] This is a complaint that the Public Service Alliance of Canada ("the bargaining agent" or "the respondent") failed its duty of fair representation. The complaint was originally made with the Canada Industrial Relations Board (CIRB) on March 26, 2025, which forwarded it to the Federal Public Sector Labour Relations and Employment Board ("the Board"). It is under s. 190(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2).

[2] This panel of the Board has determined that the complaint can be decided on the basis of the written materials alone, as permitted by s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365). The facts and circumstances that gave rise to the complaint (as opposed to their qualification) are not in dispute. Considering the parties' submissions, I find that Kaley Hogan ("the complainant") has not presented an arguable case that the bargaining agent acted arbitrarily or in bad faith. Therefore, the complaint is dismissed.

II. Factual background

[3] In this complaint, the complainant alleged that the bargaining agent placed in abeyance for 15 months a duty-to-accommodate grievance that she had filed against her employer and that she was continuously ignored when she tried to have it resolved. She alleged that on March 14, 2025, she first became aware of the situation that led her to make the complaint.

[4] The complainant provided lengthy details of her allegations against the bargaining agent. They boiled down essentially to the following:

1) In March 2023, she returned to work after a combined maternity and sick leave due to a neurological injury.
2) She was deemed unable to return to her substantive PM-01 position at the call centre in which she worked and was placed in a CR-04 role.
3) She alleged that the role change was not based on meaningful consultation.
4) In the spring of 2023, she asked the bargaining agent for help filing a grievance about her pay and accommodation issues.
5) Her grievance was filed, but she stated this: "… it was later revealed that my grievance was placed in abeyance without my knowledge or consent, and I received no updates for over 15 months …".
6) She alleged that during that 15-month period, her correspondence to the bargaining agent had been ignored or not acted upon and that when she

attempted to return to work in January 2025 (after having been placed off work in the fall of 2023), the bargaining agent failed to contact her.
7) She alleged that she received no updates, as follows: "… until last week [the week of March 17, 2025] when I was medically mislabeled in official correspondence by my supervisor calling me 'neurodivergent'".

[5] She summarized her complaint as follows:

> …
>
> *I filed a grievance in November of 2023 and was never told it was put in abeyance. My union failed to provide representation or updates for 15+ months.*
>
> *I contacted multiple union representatives who ignored or dismissed my documented distress and legal concerns.*
>
> *I repeatedly asked for help addressing a toxic work environment and procedural violations that were directly harming my health. I was met with silence or deflection. I have never received a clear or consistent point of contact from* [Canada Employment & Immigration Union]*, and I have continued to experience escalating harm and distress due to their inaction.*
>
> …

[6] After the Board received the complaint, it directed the bargaining agent to file a response.

[7] In its response, dated April 24, 2025, the bargaining agent submitted that the complaint is without merit. It also sought an order dismissing the complaint without a hearing. It made the following submissions:

1) The complainant contacted the bargaining agent shortly before her scheduled return to work in March 2023, to explain that she had experienced adverse health issues, that her doctor had recommended limited phone use and slower computing capability, and that she had provided that information to her management.
2) She told the bargaining agent that she was concerned because at that time, her management made no commitment to reassign her to new work.
3) A bargaining agent representative spoke with her in late January or early February 2023, to provide advice about the accommodation policy.
4) She was then scheduled to return to work in mid-February 2023, but the return was delayed while her management received the accommodation request and considered alternative work for her.
5) In March 2023, the accommodation discussion was concluded, and she was offered and accepted a position as a CR-04 program and support delivery clerk.
6) On March 29, 2023, she emailed the bargaining agent, stating that she was back at work and that the position was suitable.

7) On July 13, 2023, she reopened discussions with the bargaining agent, explaining her difficulties achieving an appropriate ergonomic setup, which a local representative then dealt with.
8) In September 2023, she received notices of overpayments and, with the bargaining agent's support, engaged in discussions with her employer.
9) On December 10, 2023, she filed the grievance about her pay and accommodation issues.
10) On January 2, 2024, she advised the bargaining agent's national representative that the local officer was providing support to her.
11) The accommodation grievance remains in effect, and the bargaining agent remains ready and willing to proceed with its processing.

[8] The bargaining agent added that this complaint was premature because the grievance that underlies it remains live.

[9] On October 2, 2025, the complainant filed a seven-page response to the bargaining agent's April 24, 2025, motion. She introduced her response by summarizing the substance of her complaint and allegations against the bargaining agent as follows:

> *For nearly two years, a documented neurological disability and a good-faith attempt to return to work were met not with protection, but with a cascade of union failures that left a mixed discrimination and pay grievance misclassified, abeyed* [*sic*]*, and ignored while losses mounted; despite repeated outreach and escalation to multiple CEIU/PSAC officials, accommodation remained unresolved, pay errors and LWOP continued, and even a protected refusal of unsafe work was mishandled and deflected toward* [long-term disability]*, compounding financial and health harm beyond repair if not addressed now. The record shows ongoing requests to local and Atlantic leadership that went unanswered or were ineffective, reframing of a grievance that expressly included Article 19 into a Phoenix-only file without individualized assessment, and case management choices that stalled redress while employer demands escalated, forcing impossible choices between unsafe duties and income loss.*
>
> …

[10] She then provided a chronology of events. The chronology roughly mirrored the one set out in the motion to dismiss, except that her interpretation of the flow of the events (or of the bargaining agent's actions) differed from that of the bargaining agent. She concluded by providing examples as follows of what she alleged was conduct "[d]emonstrating [a]rbitrariness/[s]erious [n]egligence" by the bargaining agent:

> …

> • [JP]*: (Local President): Non-responsiveness/ineffective assistance while I sought basic documents and action on intertwined pay/accommodation harms, contributing to delay and confusion. She helped at the beginning but then once the president position opened up for her to take she ignored where we were and my pleas fo help who passed me on to* [KB] *who was beyond incompetent and did not understand the collective agreement or her role.*
>
> • [KB]*:* [return to work] *barrier communications that show the accommodation remained contested and obstructed without effective union enforcement. She ignored these pleas and never followed up as she stated she would.*
>
> • [SS]*: Reframed the case to divorce Phoenix from accommodation to deflect responsibility, despite the grievance's express linkage; no corrective action on the misclassification/abeyance. She outright lied in an email asking me what I was so upset about to cover their tracks.*
>
> • [SM]*: Provided incorrect/harmful guidance on protected refusal of unsafe work and* [leave with pay]*, and suggested LTD instead of enforcing statutory rights; acknowledged union control over progression while warning that my withdrawal would bar access, confirming control amid inaction.*
>
> • [RR]*: as CEIU representative during active accommodation and pay disputes, failed to advise or assist on a proper protected refusal of unsafe work under the Canada Labour Code and instead requested a copy of my* [Canadian Human Rights Commission] *complaint, reacted adversely upon learning she was named, and then instructed me to stop contacting her in an email- conduct that abandoned representation when statutory rights were engaged and contributed to delay and prejudice; contemporaneous emails and messages corroborate these events and are available to the Board upon request.*
>
> …
>
> [*Sic* throughout]

[11] I turn now to the reasons for my decision to dismiss the complaint.

III. Analysis and decision

[12] The law with respect to a bargaining agent's duty of fair representation is clear. A bargaining agent must exercise its duty to represent its members in good faith, objectively and honestly, and only after thoroughly considering a grievance, while taking into account the employee's interests, on the one hand, and its own and those of its membership on the other. It must not act in an arbitrary, a discriminatory, a

capricious, or a wrongful manner, and it must act without serious negligence or hostility toward the employee.

[13] But it is not for the Board to armchair quarterback the tactical decisions that the bargaining agent may make when balancing those interests and demands. A bargaining agent is not required to be correct in its analysis of the facts and issues or its decisions based on that analysis, as long as it conducted its analysis carefully and without animus or discrimination toward the employee.

[14] The law is also clear that the burden on a complainant in a duty of fair representation case is to make out facts, that if taken as proven, make out a case that the bargaining agent acted in a manner that was arbitrary, discriminatory, or in bad faith. Mere dissatisfaction with the bargaining agent's representation, or its advice or decision as to how to handle a matter, is not enough to support a duty of fair representation complaint; see *Paquette v. Public Service Alliance of Canada*, 2018 FPSLREB 20 at para. 38. Nor is a complainant's opinion as to the merits of a bargaining agent's decisions — or their assumptions, speculations, or accusations as to those decisions — sufficient to ground allegations of a breach of the duty of fair representation; see *Reid v. Public Service Alliance of Canada*, 2024 FPSLREB 100 at para. 30.

[15] When considering a bargaining agent's conduct and decisions — and a complainant's dissatisfaction with that conduct and those decisions — one may also take notice of the fact that it often takes years to process and resolve a grievance in the federal public service. That should not be surprising, given its size and complexity.

[16] Public service bargaining agents have to handle an enormous number of grievances involving complex legal and factual issues, all of which take time and resources. Delays much longer than the complainant complains of in this case are common. Such a delay may be an understandable source of disappointment or resentment on the part of a complainant. But on its own, it is not evidence of arbitrary, discriminatory, or bad-faith conduct by a bargaining agent.

[17] With those observations in mind, on the record before me, it is clear that the complainant failed to meet her onus. It is clear that she is unhappy with the bargaining agent and that she believes that her grievance could have been handled more quickly

or in a different way. But a failure to move a grievance along more quickly, or in a certain way, does not, without more, constitute arbitrary or discriminatory conduct.

[18] First, I note that the parties do not dispute the facts, which include the following:

1) The communication between the complainant and the bargaining agent.
2) The bargaining agent was engaged in the accommodation process, which required her cooperation, as well as that of the bargaining agent and her employer.
3) There **was** an accommodation process, in which the bargaining agent participated.
4) The bargaining agent filed the grievance on her behalf about her apparent (or at least current) objection to the accommodation that she received.
5) The bargaining agent is and always has been willing to continue representing her on that grievance and to push it forward.

[19] None of those facts suggest that the bargaining agent was unresponsive to the complainant's accommodation claim. It responded and filed the grievance. The grievance has not been withdrawn, and it remains willing to continue its representation of her.

[20] Rather, she is critical of the speed with which her grievance is proceeding, she doubts the competence of the bargaining agent's representatives, and she disagrees with some of its advice or recommendations received over the course of the accommodation and grievance processes. But as already noted, none of that is evidence of arbitrary, discriminatory, or bad-faith conduct. Mere dissatisfaction with the bargaining agent's representation, or its advice or decisions as to how to handle a matter, is not enough to establish unfair representation: *Drouin v. Professional Association of Foreign Service Officers*, 2023 FPSLREB 3 at para.69.

[21] Given the complainant's complex medical and social issues, it is not surprising that their resolution might require more time for a bargaining agent to document and to present as part of an accommodation request. Nor is it surprising that disagreements might have occurred over time as to what might have been required to support an accommodation grievance or over the tactical or strategic decisions made along the way. But again, none of that is evidence of arbitrary, discriminatory, or bad-faith conduct.

[22] Accordingly, on those facts and for those reasons, the following order is made.

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

(The Order appears on the next page)

IV. Order

[24] The complaint in Board file no. 561-02-52015 is dismissed.

December 8, 2025.

Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board