Date: 20251204

File: 561-02-52075

Citation: 2025 FPSLREB 162

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

NATALIE DOLE

Complainant

and

CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES

Respondent

Indexed as
Dole v. Canadian Association of Professional Employees

In the matter of a complaint made under section 190(1)(g) of the *Federal Public Sector Labour Relations Act*

Before: Patricia H. Harewood, 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 August 18 and 28 and September 19, 2025.

REASONS FOR DECISION

I. Complaint before the Board

[1] This decision addresses a request by Natalie Dole ("the complainant") to have her file reassigned to a different Board member who has not represented bargaining agents. The complainant also prefers that the Board member assigned be a person with disabilities because the complainant notes that the issue of accommodating her disability is at the core of her complaint. She claims the fact that the assigned Board member previously represented bargaining agents puts the member in a significant conflict of interest and would cause any reasonable person in the complainant's position to "raise an eyebrow".

[2] Ms. Dole made her complaint on April 4, 2025, alleging that the Canadian Association of Professional Employees (CAPE or "the bargaining agent") breached its duty of fair representation when it decided that it was premature to file a grievance to contest the duty of the complainant's employer to accommodate her on the basis of a disability.

[3] The bargaining agent raised an objection to the complaint and sought a motion for dismissal without a hearing on the grounds that the complaint does not disclose a *prima facie* case of a breach of s. 187 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*).

[4] I have treated the complainant's request to reassign her file as a motion for my recusal on the grounds that there is a reasonable apprehension of bias because her submissions suggest that my work history conflicts with my ability to fairly adjudicate her complaint. The Federal Public Sector Labour Relations and Employment Board ("the Board") has characterized similar requests this way (see Appendix A of *Panesar v. Canada Revenue Agency*, 2024 FPSLREB 32; and *Veillette v. Chouinard*, 2013 PSLRB 61). The complainant insists that her request should not be characterized as such but simply as a "request to reassign the complaint", but she maintains the reasons for her request.

[5] I was assigned the file on August 5, 2025, to determine whether the motion to dismiss the complainant's complaint under s. 187 of the *FPSLRA* could be addressed on the basis of written submissions.

[6] The parties had already filed written submissions, including the following:

- the complaint on April 4, 2025;
- the bargaining agent's response and motion to dismiss the complaint on May 2, 2025;
- the complainant's response to the motion to dismiss the complaint on May 16, 2025; and
- the bargaining agent had also requested an opportunity to file a brief reply to the complainant's response to its motion on May 22, 2025.

[7] After reviewing the submissions, I granted the bargaining agent's request with a deadline of September 19, 2025, for reply or rebuttal submissions. In my directions, I noted that the rebuttal submissions could not exceed five pages.

[8] After I granted the bargaining agent's request, the complainant made a request on August 19, 2025, to the Board's chairperson to reassign the file to another Board member.

[9] With respect to that request, I gave the parties an opportunity to make submissions on the motion for my recusal. I noted that I would first make a determination on this issue before addressing the bargaining agent's motion to dismiss the complaint.

[10] For the reasons that follow, I deny the complainant's motion for my recusal. Applying the test in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369, I find that a reasonable person, looking at the situation realistically and practically, would conclude that there is no reasonable apprehension of bias in the decision to allow the bargaining agent to file additional submissions or in the adjudication of the complaint

II. Summary of the arguments

[11] The complainant requests that her case be reassigned to a Board member with disabilities and without a history of representing bargaining agents against vulnerable members. She claims that the fact that the assigned Board member previously represented bargaining agents puts the member in a significant conflict of interest and would cause any reasonable person in the complainant's position to "raise an eyebrow". She submits that it would be preferable to assign her case to someone with disabilities since her complaint makes allegations about the bargaining agent's failure to accommodate her.

[12] The bargaining agent argues that there is no merit to the complainant's motion for recusal.

[13] The bargaining agent submits that the Board is made up of members with histories of working in labour relations in the federal public sector, either for bargaining agents or the employer. It points to the strong presumption that Board members will act impartially and refers to s. 6(4) of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), which requires the Board's members to act impartially in the performance of their duties.

[14] Further, the bargaining agent submits that the decision that the Board member made — which gave it an opportunity to file supplementary submissions — was a routine procedural decision.

[15] Applying the test outlined in *Committee for Justice and Liberty*, the bargaining agent notes that the complainant has the onus to establish a reasonable apprehension of bias. It is a high threshold to meet, and a mere suspicion of bias is not enough (see *Singaravelu v. Deputy Head (Correctional Service of Canada)*, 2009 PSLRB 8).

[16] The bargaining agent cites *Bialy v. Public Service Alliance of Canada*, 2012 PSLRB 125, and *Panesar* as support for its position that a past affiliation with an employer or a bargaining agent does not on its own establish a reasonable apprehension of bias. It also argues that there is no evidence that the Board member exhibited a reasonable apprehension of bias by allowing it to respond to the complainant's response to its motion. An informed person, viewing the situation reasonably, would find no reasonable apprehension of bias.

[17] In rebuttal, the complainant reiterates that she is not seeking a motion for my recusal. She simply wants another Board member assigned to the case for the reasons that she has stated. When the Board member asked her to clarify whether she had withdrawn her motion for a recusal, the complainant noted that she maintained her request to have her file reassigned to another Board member, for the reasons that she has outlined.

III. Reasons

[18] The decision that I must make is whether my history of working for bargaining agents would cause a reasonably informed person to conclude that there is a

reasonable apprehension of bias in the adjudication of the complainant's complaint under s. 187 of the *FPSLRA*.

[19] The complainant insisted throughout her written submissions that she is not asking for a motion for my recusal.

[20] However, in my view, the complainant is indeed asking for my recusal on account of a reasonable apprehension of bias, and I have treated it as such. The complainant indicates that she wishes to challenge my assignment to her complaint and asks that a different Board member be assigned to her file. She suggests that my work history representing bargaining agents has tainted my ability to fairly adjudicate her complaint. She also prefers someone who identifies as disabled, due to the issues raised in her complaint.

[21] Since I am the Board member assigned to the bargaining agent's motion for dismissal, I will determine whether I should grant the complainant's motion for recusal. As I said previously in *Poirier v Deputy Head (Department of Crown-Indigenous Relations and Northern Affairs)* 2023 FPSLREB 120 at para 16, the Board has dealt with numerous recusal requests in the past. It is common Board practice that the Board member assigned to the file will address any recusal motion that may be filed.

[22] In addressing the recusal motion, I will apply the oft-cited test of the Supreme Court of Canada in *Committee for Justice and Liberty* in the dissenting opinion of Justice De Grandpré at page 394, to determine whether there is a reasonable apprehension of bias in the adjudication of her complaint. The test is, "… what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude." Would that person think that it is more likely than not that I would, consciously or unconsciously, decide the complaint unfairly?

[23] I adopt Justice Cory's explanation of concepts of bias and impartiality as described in the majority decision at paras 104 and 105 of *R. v. S. (R.D.)*, [1997] 3 SCR 484:

> *104 In* Valente v. The Queen, 1985 CanLII 25 (SCC), *[1985] 2 S.C.R. 673, at p. 685, Le Dain J. held that the concept of impartiality describes "a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case", He added that "[t]he word 'impartial' …connotes absence of bias, actual or perceived". See also* R. v. Généreux, 1992 CanLII 117 (SCC),

> *[1992] 1 S.C.R. 259, at p. 283. In a more positive sense, impartiality can be described – perhaps somewhat inexactly – **as a state of mind in which the adjudicator is disinterested in the outcome, and is open to persuasion by the evidence and submissions.***
>
> *105 In contrast, bias denotes a state of mind that is in some way predisposed to a particular result, or that is closed with regard to particular issues. …*
>
> [Emphasis added]

[24] Further, mere suspicion of bias is not enough (see *Adams v. British Columbia (Workers' compensation Board)*, (1989) 42 BCLR (2d) 228 at para 13) to establish a reasonable apprehension of bias. As the Board has repeatedly stated, the person making a motion for recusal due to a reasonable apprehension of bias bears the onus of proving it (See *Singaravelu*, *Bialy*, *Panesar*, and *Poirier)*. Moreover, the threshold for establishing such a finding is high (see *R v. S. (R.D.)*).

[25] The complainant provided no evidence to support her request for my recusal. In this case, I find that she has failed to establish a reasonable apprehension of bias in my decision to grant the bargaining agent's request to make supplementary submissions or that there would be a reasonable apprehension of bias were I to continue to adjudicate her complaint.

[26] I will now explain why.

[27] First, I agree with the bargaining agent that there is a strong presumption that Board members will exercise their powers and all their duties with impartiality. Section 6(4) of the *Federal Public Sector Labour Relations and Employment Board Act* codifies that presumption as follows:

Non-representative Board	***Impartialité***
(4) *Despite being recommended by the employer or the bargaining agents, a member does not represent either the employer or the employees and must act impartially in the exercise of their powers and the performance of their duties and functions.*	***(4)*** *Malgré son éventuelle nomination sur recommandation de l'employeur ou des agents négociateurs, le commissaire ne représente ni l'employeur ni les employés et est tenu d'agir avec impartialité dans l'exercice de ses attributions.*

[28] Therefore, regardless of a Board member's work history with a bargaining agent or the employer in the federal public sector, the presumption is an impartial adjudication.

[29] I find this case most analogous to *Bialy*, in which the Board member determined as follows in response to a motion for recusal due, among other things, to the Board member's history working for the employer:

> …
>
> *25 … The mere fact that I was formerly counsel with the Department of Justice and that I provided, from time to time, advice to different departments, including the HRSDC, in no way affects my capacity to demonstrate a completely impartial and unbiased mind in ruling on these complaints. The complainants' suspicions are simply insufficient to demonstrate bias on that basis.*
>
> …

[30] Similarly, I find that the fact that I previously worked for a large bargaining agent in the federal public sector and gave advice to bargaining agents and their members alike in no way affects my ability to be impartial and unbiased.

[31] Once they are appointed to the Board, the adjudicative impartiality of Board members is strongly presumed, regardless of whether they previously worked for the employer or a bargaining agent in the federal public sector (see *Oberlander v. Canada (Attorney General)*, 2019 FCA 64; and *Veillette*). As in *Touri v. Treasury Board (Department of National Defence)*, 2025 FPSLREB 50 at para. 38, the complainant has adduced no evidence to rebut this presumption.

[32] Second, by statutory design, Board members are drawn from the labour relations community in the federal public sector. This expertise is an asset, not a liability. It helps meet the Board's mandate to adjudicate grievances fairly, credibly and efficiently under the *FPSLRA*, administer the collective bargaining systems in the federal public sector, and adjudicate staffing complaints made under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13). Therefore, it is understood and expected that Board members will often come to the Board with a rich history of working with bargaining agents or employers in the federal public sector.

[33] To disqualify a Board member from adjudicating a dispute involving a bargaining agent on the sole basis that the member has represented bargaining agents in the past stands in direct contradiction to the legislative requirement for that kind of labour relations expertise.

[34] Moreover, all Board members have the requisite experience to adjudicate complaints within their jurisdiction. Parties cannot pick and choose which Board member may hear a complaint, under s. 187 of the *FPSLRA* based on their belonging or lack of it to a protected group under the *Canadian Human Rights Act*. To do so would be highly inappropriate. It could lead the Board and the parties down a dangerously discriminatory road of no return.

[35] In this case, the complainant, who identifies as disabled, has assumed that I am not disabled, and then has suggested without foundation that that should disqualify me from adjudicating her complaint because I cannot be impartial. In its submissions, the bargaining agent did not address the complainant's preference that the file be assigned to a Board member with disabilities.

[36] In any event, I find the complainant's assumption that I cannot be impartial to be without foundation. While enhancing the diversity of neutrals (adjudicators and mediators) continues to be a necessary goal within the broader labour and employment relations community (See Ontario Bar Association's Neutral Diversity Report of March 29, 2022), the strong presumption of impartiality applies to all Board members, regardless of disability status, race, ethnicity, gender, sexual orientation or any other protected ground.

[37] Once appointed, a Board member must take an oath of impartiality administered by the Board's chairperson or a vice-chairperson. The complainant's suggestion that I cannot be impartial with respect to her complaint if I do not have a disability is analogous to concluding that I cannot be impartial with respect to issues involving white complainants because I am Black. It is an allegation that cannot stand.

[38] Third, in this case, there is no evidence to establish a conflict of interest that would lead to a reasonable apprehension of bias. I have never worked for CAPE. In my previous role working for another bargaining agent prior to my appointment to the Board, I have never been involved in any capacity in the complainant's file. In fact, the first time I came across this file was when it was assigned to me in August 2025 to

address the bargaining agent's motion to dismiss the complaint. Therefore, the complainant has failed to establish any conflict of interest.

[39] In this case, I gave the bargaining agent an opportunity to respond to the complainant's response to its motion. From a procedural standpoint, I agree with the respondent that this is routine Board practice. If a party raises an objection, the opposing party has a chance to reply, and the objecting party is given an opportunity to file a rebuttal. This is not bias. This is procedural fairness in action.

[40] Procedural fairness applies when an administrative decision affects an individual's rights, privileges, or interests (see *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 20). One aspect of procedural fairness is that each party must be given an opportunity to be heard. This may include allowing a party to file response or rebuttal submissions, so that the other party can know and fully respond to any allegations. As the Supreme Court of Canada determined in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 SCR. 385, at 402: "Generally speaking, fairness requires that a party must have an adequate opportunity of knowing the case that must be met, of answering it and putting forward the party's own position".

[41] As an administrative tribunal, the Board is also the master of its own procedure. For example, it can determine if matters can proceed without an oral hearing or by way of written submissions (see s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act)*.

[42] Furthermore, there is no legislative or regulatory prohibition against giving a party an opportunity to make additional submissions.

[43] In this case, after carefully reviewing the parties' submissions and the bargaining agent's request, I found that it was in the interest of procedural fairness to allow the bargaining agent to provide a rebuttal.

[44] For all these reasons, I find that the complainant has failed to meet her burden of establishing a reasonable apprehension of bias in my decision to allow the bargaining agent to provide rebuttal submissions. For the same reasons, I also find that she has failed to establish that there would be a reasonable apprehension of bias if I continue to adjudicate the complaint.

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

(The Order appears on the next page)

IV. Order

[46] The complainant's motion for recusal is denied.

December 4, 2025.

Patricia H. Harewood,
a panel of the Federal Public Sector
Labour Relations and Employment Board