Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Ms. Mataya Reid,

complainant,

and

Canadian Union of Postal Workers,

respondent,

and

Canada Post Corporation,

employer.

Board File: 30020-C
Neutral Citation: 2013 CIRB **693**
August 13, 2013

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. André Lecavalier and Norman Rivard, Members.

Parties' Representatives of Record

Ms. Mataya Reid, on her own behalf;

Mr. Christian Martel, for the Canadian Union of Postal Workers;

Ms. Stéfanie Germain, for Canada Post Corporation.

These reasons for decision were written by Mr. Graham J. Clarke.

I. Nature of the Complaint

[1] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (*Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to issue this interim procedural decision without an oral hearing.

[2] On June 5, 2013, the Board received a complaint from Ms. Mataya Reid, who alleged that her trade union, the Canadian Union of Postal Workers (CUPW), had violated its duty of fair representation (DFR) under the *Code*:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

II. Challenges Arising from the Pleading

[3] The DFR complaint contained 270 pages. On August 6, 2013, Ms. Reid filed a second 86 page tranche of disparate documents.

[4] The initial handwritten pages of the 356-page complaint suggest that issues arose following Ms. Reid's transfer from Vancouver to Quebec City in October, 2012. The length of her workday caused her to raise a health and safety issue under section 33 of the CPC–CUPW collective agreement.

[5] Ms. Reid took issue with CUPW's drafting of the grievance, including an alleged failure to reference section 33.13 of the collective agreement.

[6] Ms. Reid's complaint then becomes extremely difficult to follow. She references bullying and human rights issues. She further mentions an alleged exercise of the right to refuse work for reasons such as constant bullying, intimidation and harassment. That separate complaint has not yet been assigned to a panel of the Board.

[7] On page 11 of the complaint, Ms. Reid then commences what appears to be a journal of events occurring over the next several months at her workplace.

[8] On page 23, Ms. Reid seemingly completes her complaint. She alleged that CUPW did not help her with her bullying issues, in part due to her speaking English. Ms. Reid signed page 23 of her complaint on June 3, 2013.

[9] However, page 24 of the complaint seems to start a new set of handwritten diary-style notations from March 13, 2013 onwards. Ms. Reid suggests she will describe "horrible working conditions" and all the avenues she followed to improve those conditions. She describes various events over the next 13 handwritten pages. This takes the complaint up to page 40.

[10] Ms. Reid then attaches a lengthy series of documents such as her CUPW local's governing statute. There are then numerous documents appended including other CUPW documents, emails and grievance forms. There are also what appear to be handwritten minutes of meetings, presumably taken by Ms. Reid, but the Board can only speculate.

[11] The August 6, 2013 additional 86-page tranche of documents numbered from 271 to 356 included more handwritten notes, printed emails, and other sundry documents.

[12] In sum, the complaint, while initially appearing to describe Ms. Reid's issues, as best the Board could ascertain them, then devolves into a mass of documents, without any indication about their relevance to the DFR complaint.

III. Pleadings and Dealing with the Self-Represented Complainant

[13] What should the Board do when faced with this type of initial pleading?

[14] The *Canada Industrial Relations Board Regulations, 2012* (*Regulations*) establish the essential content of a complaint. For example, section 40 of the *Regulations* requires a complainant filing an unfair practice complaint (of which a DFR complaint is just one type) to provide proper particulars:

> 40.(1) A complaint must include
>
> …
>
> (*d*) full particulars of the facts, relevant dates and grounds for the complaint;
>
> …

[15] The Board is not alone among administrative tribunals in attempting to demystify its adjudicative process for lay people. No labour tribunal expects lay people to be as familiar with legal concepts as are experienced labour lawyers or labour relations experts.

[16] Indeed, the Board has created public "Information Circulars" (ICs), available on its website, in order to assist all parties, whether lay people or not, with Board proceedings. One IC entitled "Duty of Fair Representation" helps lay people understand the scope of a trade union's duty under section 37 of the *Code*.

[17] That IC indicates that the Board, when reviewing a DFR complaint, examines a trade union's process in order to see if it meets the high threshold of being arbitrary, discriminatory or in bad faith. The IC emphasizes that the Board does not sit in appeal of a trade union's decisions. A trade union has a large discretion when representing the members of its bargaining unit.

[18] The Board has further created a non-obligatory DFR Complaint Form which is designed to focus complainants on the need to describe how their trade union allegedly acted in an arbitrary, discriminatory or bad faith manner with regard to their rights under the collective agreement. Ms. Reid put some of her comments on that form, but her complaint did not seem to focus on the actual questions the Board had set out.

[19] While the Board has attempted to assist lay people to focus on the essential elements of a DFR complaint, it is ultimately up to each complainant to submit a proper pleading. Neither the Board, nor the opposing parties, are required to sift through reams of material in an attempt to analyze whether they contain sufficient elements to make out a cause of action.

IV. The DFR *prima facie* Process

[20] The Board applies a *prima facie* case process for DFR complaints. After a complaint is received, but before asking for submissions from the trade union and the employer, the Board first examines whether the complainant has established a case, at least at an initial glance.

[21] Only if the complainant has demonstrated a *prima facie* case will the Board request the respondents to respond. In *Crispo*, 2010 CIRB 527, the Board described this essential screening process:

> [12] The Board conducts a *prima facie* case analysis for the numerous duty of fair representation cases it receives. This *prima facie* case analysis accepts a complainant's pleaded material facts as true and then analyzes whether those material facts could amount to a *Code* violation.
>
> [13] The *prima facie* case analysis weighs the material facts as opposed to legal conclusions. A complainant who pleads a legal conclusion by alleging, for example, that certain conduct was arbitrary, discriminatory or in bad faith does not, by so doing, avoid the application of the *prima facie* case test.
>
> [14] In *Blanchet* v. *the International Association of Machinists and Aerospace Workers, Local 712*, 2009 FCA 103, the Federal Court of Appeal endorsed the Board's use of a *prima facie* case analysis and its focus on the material facts:
>
> > [17] As a general rule, when a court presumes the allegations to be true, they are allegations of fact. That rule does not apply in findings of law: see *Lawrence v. The Queen*, [1978] 2 F.C. 782 (T.D.). It is for the court, not the parties, to determine questions of law: *ibidem*.
> >
> > [18] It is true that, in the passage quoted, the Board did not specify that it was referring to the applicant's allegations of fact. However, the reference to the applicant's allegations cannot be anything other than a reference to allegations of fact. Otherwise, a complainant would need only to state as a conclusion that his or her union's decision was arbitrary or discriminatory for the Board to be forced to find that there had been a violation, or at least a *prima facie* violation, of section 37 of the Code and rule on the merits of the complaint. Thus, the complaint screening process would become a thing of the past.

[22] The Board's IC and DFR Form go to significant lengths to focus complainants on describing how they allege their trade union acted in an arbitrary, discriminatory and/or bad faith manner.

[23] This need for focus is important given the sheer volume of DFR complaints which fail to comprehend a trade union's role. For example, the Board receives numerous complaints which simply express disagreement with a trade union's decision whether to go to arbitration. Others contest a trade union's interpretation of the collective agreement.

[24] In *Kasim*, 2008 CIRB 432, the Board described some of the types of internal trade union decisions to which the DFR process does not apply:

> [19] The duty of fair representation in the *Code* ensures that a bargaining agent respects the significant rights that come with certification. A bargaining agent cannot act in a manner that is arbitrary, discriminatory or in bad faith with regard to an employee's rights under the applicable collective agreement.
>
> [20] However, this duty does not mean that every employee has a right to have his or her grievance taken to arbitration. Rather, the bargaining agent can determine which grievances will go to arbitration and which grievances will be settled.
>
> [21] In order to analyze whether a bargaining agent respected the duty imposed by the *Code*, the Board examines the process it followed in its representation of an employee. A bargaining agent is not comparable to a private sector lawyer who is obliged to follow the specific instructions of the client. Rather, in almost all cases, the bargaining agent has carriage of the grievance and, while it needs to communicate with the employee in question, retains the discretion to decide what to do with the grievance.
>
> [22] The Board does not sit in appeal of how a trade union exercises this discretion. The Board will only intervene if a complainant is able to demonstrate that a bargaining agent acted in an arbitrary, discriminatory or bad faith manner.

[25] The importance of the Board's DFR *prima facie* case screening process heightens the need for proper pleadings.

V. Insufficient Pleading

[26] What should the Board do in the face of 356 pages of generally unfocussed material filed as a DFR complaint?

[27] Other labour boards in Canada have had to deal with this same issue.

[28] For example, the British Columbia Labour Relations Board (BCLRB) follows a similar *prima facie* case analysis for its DFR complaints. In *John Murphy*, [2005] B.C.L.R.B.D. No. 33 (*Murphy*), the BCLRB commented on the challenges for a tribunal which has to wade through a large swath of unorganized material:

> ...
>
> [9] I endorse the views expressed by the original panel regarding the lack of details of the alleged violations of the Code. Murphy failed to explain how he says the Union and others actually violated the Code. **I agree with the original panel that a party bringing a complaint before the Board is obliged to provide coherent submissions setting out relevant facts and cannot simply file volumes of documents and expect the Board to search through them to find some evidence that might be relevant.**

> **[10] I would add that it is not enough for a complainant to raise a bald allegation of impropriety and attach a body of documents and expect that the Board will divine how those documents demonstrate a breach of the Code or support the bald assertions of impropriety.**
>
> **[11] The basic requirement to provide an explanation of how a breach is alleged to have occurred is reinforced in the Board's Rules. Section 2(2) requires that an application contain an outline of the facts and circumstances upon which the applicant intends to rely, including when and where relevant facts occurred and who engaged in the alleged breaches of the Code.**
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> …
>
> (emphasis added)

[29] In *Murphy*, *supra*, the BCLRB dismissed the complaint.

[30] The Ontario Labour Relations Board in *Manuel-Bolduc*, [2007] O.L.R.D. No. 5171, similarly considered a complainant's pleading and ordered the preparation of a particularized, concise pleading:

> **[3] The applicant has filed submissions and documents totalling approximately 1.25 inches in volume. As submitted by the union, the sheer volume makes it very difficult to decipher and respond to the application.**
>
> **[4] The applicant is directed to particularize her complaint in numbered paragraphs, totalling no more than five pages.**
>
> [5] The applicant is to file her submissions and serve them on the other two parties by no later than Monday, January 14, 2008, failing which, her application will be dismissed.
>
> [6] The other parties are not required to file submissions in response to the applicant's submissions unless the board indicates otherwise.
>
> [7] I remain seized of this application for the purposes of dealing with the applicant's submissions only.
>
> (emphasis added)

[31] The Board shares these views emanating from other labour tribunals. In some cases, such as in *Murphy*, *supra*, an unwieldy pleading may simply lead to the case being dismissed. In other cases, such as in *Manuel-Bolduc*, *supra*, if the Board's review reveals a semblance of a complaint, then it may give a complainant an opportunity to particularize and focus his/her pleading.

VI. Decision

[32] As mentioned above, the Board is fully aware that Ms. Reid, like many unrepresented litigants, may not be familiar with the *Code*. But a complainant still has the ultimate obligation of going through his/her own material, including allegedly relevant documents, and drafting a complaint in accordance with the *Regulations*. That obligation is not satisfied by filing hundreds of pages of documents and implicitly asking the Board to go through it and decide what, if anything, should form part of a complaint.

[33] It would be unfair in a DFR case for the Board to forego the essential *prima facie* case screening analysis of an unwieldy pleading and instead ask the respondents to provide their submissions. One of the goals of the *prima facie* process is to avoid the waste of resources which occurred in the past when respondents had to respond to every DFR complaint, no matter how deficient.

[34] The quid pro quo is that respondents must now take the time necessary to respond properly in those cases where the Board requests submissions after finding that a *prima facie* case exists.

[35] In this case, the Board is not prepared to dismiss Ms. Reid's complaint outright, though that is an available option in the right circumstances. While the complaint is unfocussed, Ms. Reid initially attempted to set out her concerns with regard to CUPW's alleged actions.

[36] However, it will be up to Ms. Reid to provide a proper and focussed pleading.

[37] The Board orders Ms. Reid to do the following for her DFR complaint:

- Ms. Reid will set out specifically how CUPW allegedly acted in an arbitrary, discriminatory and/or bad faith manner with regard to her rights under the collective agreement;
- Ms. Reid will attach to her complaint only relevant documents, together with an explanation of their relevance;
- The Board refers Ms. Reid to its recent decision in *Browne*, 2012 CIRB 648, which reviewed certain key DFR principles.

[38] Once Ms. Reid has provided this particularized pleading, the Board will then examine the complaint anew. The respondents are not required to take any further steps at this point.

[39] Ms. Reid will have 30 days from the date of this decision to provide her particularized pleading, failing which the matter will be dismissed.

[40] This is a unanimous decision of the Board.

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Graham J. Clarke
Vice-Chairperson

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André Lecavalier
Member

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Norman Rivard
Member