



Reasons for Decision

Eugène Murwanashyaka,

complainant,

and

Syndicat des employées et employés
professionnels(les) et de bureau, section locale
434, SEPB-CTC-FTQ

respondent,

and

Laurentian Bank of Canada,

employer.

Board File: 30320-C

Neutral Citation: 2015 CIRB 791

September 25, 2015

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

Mr. Eugène Murwanashyaka, on his own behalf;

Mr. Pierrick Choinière-Lapointe, for the Syndicat des employées et employés professionnels(les) et de bureau, section locale 434, SEPB-CTC-FTQ; and

Mr. Guillaume Pelletier, for the Laurentian Bank of Canada.

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

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 determine the complaint without an oral hearing.

I. Nature of Complaint

[1] On January 31, 2014, Mr. Eugène Murwanashyaka filed a complaint with the Board in which he alleged that his union, the Syndicat des employées et employés professionnels(les) et de bureau, section locale 434, SEPB-CTC-FTQ (SEPB), had breached its duty of fair representation (DFR) under section 37 of 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.

[2] Mr. Murwanashyaka twice held temporary positions with the Laurentian Bank of Canada (Bank).

[3] In February 2014, Mr. Murwanashyaka filed another complaint, this time with the Canadian Human Rights Commission (CHRC) against the Bank. In view of that second complaint, Mr. Murwanashyaka asked the Board to hold his breach of DFR complaint in abeyance, as he wanted to focus on mediation sessions with the CHRC.

[4] The Board agreed to hold Mr. Murwanashyaka's case in abeyance on April 25, 2014, on December 30, 2014, and again on March 26, 2015. However, on April 6, 2015, the Bank asked the Board to recognize that a comprehensive settlement had been reached with the assistance of the CHRC whereby, among other things, Mr. Murwanashyaka had agreed to withdraw his complaint before the Board.

[5] Mr. Murwanashyaka claims that the Bank did not discharge its obligations under the comprehensive settlement.

[6] The Board gave the parties the opportunity to submit written submissions together with supporting documents regarding the purported settlement.

[7] After considering the written submissions and supporting documents, the Board has decided to dismiss Mr. Murwanashyaka's complaint for the reasons set out below.

II. Facts

[8] In his complaint, Mr. Murwanashyaka challenges the representation provided by the SEPB.

[9] However, the Board's decision in this matter concerns only whether or not a settlement exists relative to his breach of DFR complaint.

[10] On April 6, 2015, the Bank took the position that, as part of a comprehensive settlement negotiated with the assistance of the CHRC, Mr. Murwanashyaka's complaint before the Board had been settled.

[11] On May 29, 2015, through its decision in *Murwanashyaka*, 2015 CIRB LD 3422, the Board asked the parties to provide it with their written submissions, including a copy of any relevant documentation, regarding the settlement:

Mr. Pelletier, representing the Laurentian Bank of Canada, claims that, in a mediation process with the Canadian Human Rights Commission (the CHRC), Mr. Murwanashyaka agreed to a settlement whereby, among other things, he would withdraw his complaint before the Board.

The Board will need more information in order to decide whether Mr. Murwanashyaka's complaint before it has in fact been settled.

Consequently, the Board asks the parties to present their written submissions, together with relevant supporting documents, regarding the allegation that Mr. Murwanashyaka agreed to withdraw his complaint before the Board as part of a comprehensive settlement negotiated with the assistance of the CHRC.

(page 2)

[12] Along with its written submissions dated June 11, 2015, the Bank produced a document titled "Agreement and Release" (AR) dated August 2014. The AR contained many provisions including the following:

WHEREAS the Complainant filed complaints with the Canadian Human Rights Commission (file no. 2014 0323) and with the Canada Industrial Relations Board (file no. 30320-C);

WHEREAS the Parties agreed to take part in mediation offered by the Canadian Human Rights Commission;

WHEREAS the Parties wish to reach an amicable settlement in regard to all the disputes that concern them, directly and indirectly;

THE PARTIES AGREE AS FOLLOWS, WITHOUT CONCEDEDING OR ADMITTING TO THE MERITS OF THE ASSERTIONS OF THE OTHER PARTY:

1. The preamble forms an integral part of this agreement;

2. The Respondent undertakes to send the Complainant a general confirmation and reference letter, the terms of which shall be fully at the discretion of the Respondent;

3. In consideration of the Complainant's contentions that he was the victim of discrimination by representatives of the Respondent and as a result suffered non-material damage and incurred unspecified expenses within the meaning of the *Canadian Human Rights Act*, **the Respondent, without admitting to the merits of the Complainant's contentions, agrees to pay him the sum of... by way of compensation for hurt feelings and pain and suffering** as a result of the emotional injury suffered by the Complainant within the meaning in particular of paragraph 54(4)(i) of *Ontario Regulation 134/98*, it also being understood by the Parties that this sum is not for work performed and is not the result of employment and thus is not subject to allocation as earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations*;

...

7. The Complainant undertakes to withdraw the complaints made to the Canadian Human Rights Commission (file no. 2014 0323) and to the Canada Industrial Relations Board (file no. 30320-C), in writing, with a copy to the Respondent, within ten (10) days following the payment by the Respondent of the sum provided for in paragraph 3. The Complainant agrees to inform the Settlement Services Division once the complaints have been withdrawn;

8. The Respondent undertakes to make the social committee for 555 Chabanel aware, within ten (10) days of execution of this agreement by the parties, that employee participation in activities organized by the said committee must be of a voluntary rather than mandatory nature and also to make those involved in and responsible for the committee and the activities aware that diversity among staff able to participate in the said activities must be borne in mind;

...

10. In consideration of the fulfillment of the commitments made by the Respondent, the Complainant hereby fully, finally and forever releases and discharges the Respondent and the Syndicat des employées et employés professionnels-les et de bureau, section locale 434, their subsidiaries and their employees, representatives, officers, agents, directors and trustees **from any and all past, current or future actions, causes of action, claims, complaints, grievances or demands before any court of law or quasi-judicial or administrative tribunal in connection with his employment or termination of employment with the Respondent;**

...

13. **The Complainant acknowledges participating in the settlement of the complaints freely and voluntarily, without threat or pressure, and in full understanding of the terms that have been agreed to.** The Complainant has had adequate opportunity to first consult the appropriate government authorities and then obtain legal and/or financial advice with respect to his complaints and the terms of settlement.

(translation; emphasis added)

[13] Along with its written submissions, the Bank provided evidence that showed that it had fulfilled its obligations under the AR; for instance, the Bank sent Mr. Murwanashyaka a general confirmation and reference letter (paragraph 2 of the AR) and also paid him the sum sought (paragraph 3 of the AR).

[14] The Bank submits that, despite the reference letter and cheque, Mr. Murwanashyaka refused to discharge his obligation to withdraw his two complaints, with the CHRC and the Board.

[15] In his written submissions of June 30, 2015, Mr. Murwanashyaka does not challenge the fact that he signed the AR on August 27, 2014. However, he alleges that the Bank did not fulfill its obligation under clause 8 of the AR:

In Appendix 6 of the LBC's initial submissions, the representative merely restated in his own words what was set out in clause 8 of the agreement without providing any real proof of compliance with the provision. In this case, the LBC's representative stated in his defence filed with the CIRB in his letter of April 4, 2014, **that the complainant's belief in God** in connection with Halloween and other activities "is merely a question of perception," which shows a lack of consideration of and respect for the freedoms of belief of Christians working for the LBC. In these circumstances, suitable proof would be, for example, a memorandum, directives or other documents drafted by a person in charge and aimed at all staff. To quickly locate the information in the CIRB file, please refer to the cumulative table of contents attached to **Appendix 2** herein.

(page 2; translation)

[16] In its reply of July 29, 2015, the Bank challenged Mr. Murwanashyaka's contentions and in particular raised the fact that he had never before made the argument that clause 8 of the AR had not been fulfilled:

To begin with, **we submit that, in his response dated June 30, 2015, Mr. Murwanashyaka did not raise any point whatsoever that would lead to a ruling that there was no agreement and release in this matter.** On the contrary, in the second paragraph of page 2 of his reply, he acknowledges that he signed an agreement.

In addition, we repeat that the Bank fulfilled all of its obligations as set out in that agreement. In regard to the complainant's claim that the Bank failed to fulfill its

obligation under clause 8, we submit that this is in no way true. As shown in our letter of this past June 11, that obligation was in fact discharged. It is worth noting that at no time was it agreed that that obligation had to be discharged in one particular manner rather than another. Mr. Murwanashyaka never demanded that the obligation be discharged in a specific manner or even raised that issue in the negotiations to arrive at the settlement. The Bank was accordingly entirely free to decide on the manner in which to discharge the obligation. We refer you to our letter of June 11, 2015, concerning the manner chosen to fulfill clause 8 of the agreement and release, which was fulfilled.

In any event, the undersigned was not informed of Mr. Murwanashyaka's position regarding the fulfillment of clause 8 of the agreement until June 30, 2015. This is somewhat surprising. The time that elapsed between the date on which Mr. Murwanashyaka signed the agreement, that is, August 3, 2014, and the date on which he apprised us of his position concerning clause 8 of the agreement, that is, June 30, 2015, leaves us more than a little perplexed about the complainant's position on that point.

Further, we wish to remind you that the CHRC recognized the agreement and release, as shown in our letter of this past June 11. Finding that no agreement was reached would go against the principle of consistency in decision making in its broad sense.

(pages 2–3; translation; emphasis added)

III. Analysis and Decision

[17] Under section 16(*p*), the Board has the power to decide any question that may arise in the proceeding:

16. **The Board has**, in relation to any proceeding before it, power

...

(*p*) to **decide** for all purposes of this Part **any question that may arise in the proceeding**, including, without restricting the generality of the foregoing, any question as to whether....

(emphasis added)

[18] That power to decide “any question” includes the necessity of determining whether a party agreed to withdraw a complaint before the Board as part of a comprehensive settlement negotiated with the assistance of another administrative tribunal.

[19] Section 16(*l.1*) of the *Code* provides that a complaint before the Board may be decided by “an alternate method of resolution.”

16. **The Board has**, in relation to any proceeding before it, power

...

(l.1) to defer deciding any matter, where the Board considers that the matter could be resolved by arbitration or an alternate method of resolution.

(emphasis added)

[20] The Board held Mr. Murwanashyaka's case in abeyance precisely because there was a possibility that the mediation sessions with the CHRC would settle the disputes between the parties.

[21] In *Maritime-Ontario Freight Lines Limited et al. (1989)*, 78 di 219 (CLRB no. 762) (*Maritime-Ontario*), the Board's predecessor, the Canada Labour Relations Board, noted that disputes respecting an alleged failure to comply with a settlement are not determined by the Board but may if necessary be resolved in a civil court:

What is essential for the purposes of our present ruling is that Mr. Pomeroy did, knowingly and on legal advice, enter into the memorandum of settlement on July 22, 1988. He is bound by that settlement and, correspondingly, has the advantage of the credits therein referred to. While there may be a dispute in respect of amounts due under the settlement, such dispute may be resolved by the Court, or on an accounting and does not affect the validity of the settlement itself.

Ce qui importe, pour les besoins de notre décision, c'est que M. Pomeroy a conclu l'accord du 22 juillet 1988 en toute connaissance de cause et sur les conseils de son avocat. Il est lié par cet accord et, par conséquent, il peut à son tour réclamer les sommes qui doivent être portées à son crédit. Il existe peut-être un litige en ce qui concerne les sommes exigibles aux termes de l'accord en question, mais ce litige pourra être résolu par le tribunal ou à partir des comptes rendus comptables, et il n'en compromet en rien la validité.

(page 221)

[22] The fact of deriving benefits from a settlement, including being paid a sum of money, while refusing to discharge one's own commitments would be an abuse of law. The Board cannot be complicit in such a strategy.

[23] Mr. Murwanashyaka admits that he signed the AR with the Bank. Among other things, the Bank paid him a sum of money. In addition, he gave the Bank and the SEPB a final release and discharge.

[24] Mr. Murwanashyaka agreed to settle his complaint before the Board as part of the AR negotiated with the assistance of the CHRC. Prior to his response dated June 30, 2015, Mr. Murwanashyaka never advised the Bank of his position regarding the purported failure to

fulfill clause 8 of the AR. Mr. Murwanashyaka conveyed that new position about 10 months after accepting the benefits under the AR.

[25] The Board is satisfied that Mr. Murwanashyaka and the Bank entered into a comprehensive settlement under which Mr. Murwanashyaka was to withdraw his complaint of breach of the DFR against the SEPB. The SEPB never objected to the application of the AR to that complaint. Mr. Murwanashyaka's refusal to fulfill his commitments under the AR in no way prevents the Board from exercising its power to dismiss his complaint.

[26] Should Mr. Murwanashyaka maintain his allegation that the Bank failed to fulfill its obligations under the AR, the Board is of the view that, as described above in *Maritime-Ontario, supra*, it is not the appropriate forum for entertaining that type of allegation.

[27] For these reasons, the Board dismisses Mr. Murwanashyaka's complaint.

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

Translation

Graham J. Clarke
Vice-Chairperson

André Lecavalier
Member

Norman Rivard
Member