



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4^e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Mr. Dean Torres *et al.*,

complainants,

and

Telecommunications Workers Union (TWU)

respondent,

and

TELUS Communications Inc.,

employer.

Board File: 28089-C

Neutral Citation: 2010 CIRB 526

June 29, 2010

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

Representatives of Record

Mr. Dwight C. Harbottle and Mr. Allan McDonell, Q.C., for Mr. Dean Torres *et al.*;

Ms. Shona A. Moore, Q.C., for Telecommunications Workers Union (TWU); and

Mr. Steve Bedard, for TELUS Communications Inc.

Section 16.1 of the *Canada Labour Code (Part I - Industrial Relations)* (the *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 this complaint without an oral hearing.

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

I - Nature of the Application

[1] On April 16, 2010, the Board received a duty of fair representation complaint from Mr. Dean Torres and 45 other individual complainants.

[2] Mr. Torres alleged that his bargaining agent, the Telecommunications Workers Union (TWU), violated its duty of fair representation 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.

[3] Mr. Torres works for TELUS Communications Inc. (Telus) and alleges the TWU violated the *Code* as a result of “arbitrary and discriminatory abandonment and mishandling of grievances concerning retro pay...”.

[4] Mr. Torres asked the Board to extend, pursuant to section 16(m.1) of the *Code*, the 90-day time limit for the filing of the complaint. The Board examined this request first and did not call on the other parties to respond to the complaint.

[5] The Board has decided not to extend the *Code*'s 90-day time limit for the reasons which follow.

II - Facts

[6] Mr. Torres and his fellow complainants work as apprentice technicians at Telus. They were all TWU members in good standing.

[7] The collective agreement between Telus and the TWU has a 5-year term, from November 20, 2005 to November 20, 2010.

[8] In or about February, 2008 the TWU filed individual grievances with Telus concerning retropay allegedly owed to apprentice technicians. The TWU also filed a policy grievance regarding Telus' alleged refusal to give retropay.

[9] On or about June 5, 2009 the TWU entered into an agreement with Telus which provided retropay to 49 apprentice technicians, a group which did not include any of the complainants. Mr. Torres and his fellow complainants alleged that the TWU abandoned and/or mishandled their grievances, despite their claim of having identical cases to the 49 apprentice technicians who benefited under the settlement.

[10] On July 9, 2009 the TWU orally advised Mr. Torres and others of its decision to abandon their grievances and that newer grievances, filed on or about May 22, 2009, had not been filed in conformity with the collective agreement. The TWU provided documentation and confirmed its position in writing that same day.

[11] Rather than file duty of fair representation complaints after receiving this information from the TWU, Mr. Torres and some of the complainants instead created a "Steering Committee" which attempted "to determine nature of claims for retropay, compile documents, identify and locate Complainants, and retain counsel for Complainants"[sic].

[12] Mr. Torres eventually retained legal counsel in April 2010. Counsel immediately prepared the complaint and filed it with the Board on April 16, 2010.

[13] Mr. Torres, in seeking relief from the *Code*'s time limits, explained the delay resulted from the Steering Committee's search for other TWU members who had been similarly treated. Mr. Torres argued that if the Steering Committee had not been created, and taken the time to identify the present group of complainants, then the Board would have been faced with a number of independent section 37 complaints arising out of the same facts.

[14] In Mr. Torres' view, the Steering Committee's efforts now allow the Board to hold a single hearing to deal with all of the complaints.

[15] Mr. Torres also advised that the inability to use Telus' email system made it more difficult to identify other complainants in a timely manner.

III - Analysis and Decision

[16] Section 97(2) of the *Code* contains a 90-day time limit for the filing of unfair labour practice complaints:

97.(2) Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[17] Prior to 1999, the Board had no ability to extend this time limit, though the Board always had the discretion to determine when complainants "knew, or ... ought to have known" that they could file a complaint.

[18] With the amendments to the *Code* effective January 1, 1999, the Legislator added section 16(m.1) in order to give the Board the discretion to extend time limits such as those applying to section 37 complaints:

16. The Board has, in relation to any proceeding before it, power
...
(m.1) to extend the time limits set out in this Part for instituting a proceeding.

[19] The Board will not automatically relieve a party from compliance with the 90-day time limit for the filing of an unfair labour practice complaint. The Legislator has always emphasized that labour relations matters must be brought to the Board forthwith. Potential respondents are entitled to know whether they need to preserve evidence and otherwise prepare for a complaint under the *Code*.

[20] While it may appear unfair that laypeople need to act quickly in bringing labour relations complaints forward, section 97(2) applies equally to trade unions and employers.

[21] The Board will not exercise its discretion under section 16(m.1) so as to render illusory the Legislator's intent to oblige parties to file their labour relations complaints expeditiously.

[22] Nonetheless, the Board will consider extending the time limits in compelling situations, such as if a complainant's health prevented the filing of a timely complaint: *Louise Galarneau*, 2003 CIRB 239. Generally, the Board will consider the length of the delay and the justification for it.

[23] In this case, Mr. Torres knew, or ought to have known, following correspondence from the TWU and the telephone conversation on July 9, 2009, that a final decision on his entitlement to retro pay had been made. The 90-day time limit would have expired on October 10, 2009.

[24] The complaint was filed more than six months after the expiration of that time limit.

[25] While Mr. Torres and the complainants may in good faith have thought it preferable to file a single complaint in order to include as many complainants as possible, that is not the type of justification that will convince the Board to exercise its discretion under section 16(m.1) to excuse the nine months which passed between the start of the limitation period and the filing of the complaint.

[26] Had the Board received multiple complaints within the applicable time limit, the Board could have easily consolidated them given the similarity of the facts. Similarly, it could have suggested taking a representative case forward, given the similarity in the facts, in order to determine the outcome of all the cases.

[27] As a result, the Board declines to extend the *Code*'s 90-day time limit set out in section 97(2) of the *Code*. The complaint is dismissed.

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

Graham J. Clarke
Vice-Chairperson

Daniel Charbonneau
Member

André Lecavalier
Member