



Reasons for decision

Hania Merhi,

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: 30381-C

Neutral Citation: 2014 CIRB 747

November 14, 2014

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

Parties' Representatives of Record

Ms. Hania Merhi, on her own behalf;

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

Mr. Daniel Leduc, for 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)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all

the material on file, the Board is satisfied that the documentation before it is sufficient for it to make a procedural ruling without an oral hearing.

I. Nature of the Application

[1] On September 30, 2014, Ms. Hania Merhi sent a document production request to the Syndicat des employées et employés professionnels(les) et de bureau, section locale 434, SEPB-CTC-FTQ (SEPB), and to Laurentian Bank of Canada (the Bank), in accordance with section 21 of the *Canada Industrial Relations Board Regulations, 2012 (Regulations)*.

[2] Neither the SEPB nor the Bank responded to Ms. Merhi's request.

[3] In view of that refusal, Ms. Merhi was forced to ask the Board, on October 14, 2014, for a ruling on her document production request.

[4] On October 21, 2014, the Board wrote to the SEPB and the Bank to ask them to respond to Ms. Merhi's request. The parties provided the Board with written submissions in this regard.

[5] As indicated above, the Board is not required to hold an oral hearing: section 16.1 of the *Code*. In cases involving document production requests, the Board generally makes its determination on the basis of the parties' written submissions. The onus is therefore on the parties to ensure that their written submissions contain all of their arguments.

[6] The Board has decided to order the production of some documents sought by Ms. Merhi for the following reasons.

II. Production of Documents

[7] The parties have substantial obligations with respect to the production of relevant documents. Under section 40(1)(e) of the *Regulations*, a complainant must include supporting documents when filing a complaint:

40. (1) A complaint must include

...

(e) a copy of supporting documents for the complaint.

Section 12(1)(d) of the *Regulations* sets out the same obligation for those making a response or reply:

12. (1) Any person who makes a response or a reply must include the following information in the response or the reply:

...

(d) a copy of supporting documents for the response or reply.

[8] Section 27(1)(a) of the *Regulations* describes the requirement to produce documents where the Board decides to hold an oral hearing:

27. (1) A party that intends to present evidence must file with the Board six copies or such other number as the Board may specify of the following:

(a) all documents on which the party intends to rely as evidence, including any documents filed with the application, response or reply, as the case may be, in one or more tabbed books.

[9] Sections 12(1)(d), 27(1)(a) and 40(1)(e) of the *Regulations* are not the only provisions relating to the production of documents for Ms. Merhi's complaint. Those provisions relate solely to documents produced by parties in support of their own positions.

[10] Under section 21(1) of the *Regulations*, a party may request relevant documents held by other parties:

21. (1) A party that seeks disclosure of relevant documents must request in writing the disclosure directly from the other parties before applying to the Board for an order requiring disclosure.

[11] The purpose of the *Regulations* is to ensure that parties produce all relevant documentation. The *Regulations* were designed to ensure that a party would have access to any relevant documentation. If the parties are unable to reach agreement in this regard, the Board may resolve the dispute.

[12] In this matter, it would have been advisable for the SEPB and the Bank to have responded to Ms. Merhi's request. All parties have a responsibility under the *Regulations* to try to reach agreement on document production requests before turning to the Board for assistance. Refusing to respond to a request pursuant to section 21 of the *Regulations* goes completely against the intent of the *Regulations*.

[13] Needless to say, the requirement to try to reach agreement applies even if a complainant acts on his or her own behalf, as in Ms. Merhi's case.

III. Analysis and Decision

[14] In paragraph 28 of *Air Canada*, 1999 CIRB 3, the Board describes the principles that apply in cases involving document production requests:

[28] From these awards flow the following principles, which may be suitably applied to the present case.

1. Requests for production are not automatic and must be assessed in each case.
2. The information requested must be arguably relevant to the issue to be decided.
3. The request must be sufficiently particularized so that the person on whom it is served can readily determine the nature of the request, the documents sought, the relevant time-frame and the content.
4. The production must not be in the nature of a fishing expedition; that is, the production must assist a complainant in uncovering something to support its existing case.
5. The applicant must demonstrate a probative nexus between its positions in the dispute and the material being requested.
6. The prejudicial aspect of introducing the evidence must not outweigh the probative value of the evidence itself, regardless of any possible "confidential" aspect of the document.

[15] In her complaint, Ms. Merhi alleges arbitrary conduct and bad faith on the part of the SEPB in connection with her lay-off in October 2013. Among other things, she argues that the SEPB violated section 37 of the *Code* by reason of two letters of understanding negotiated with the Bank in 2012 and 2013.

[16] However, the SEPB and the Bank claim that the letters of understanding were followed to the letter when Ms. Merhi was laid off. The SEPB and the Bank appended a copy of the two letters of understanding and an excerpt from the current collective agreement, effective from 2012 to 2017, to their responses.

[17] The Board has decided to hold a hearing in order to hear the parties' oral evidence. There is consequently no need to further consider the parties' various allegations at this time since the facts will be determined at the hearing.

[18] The Board reviewed Ms. Merhi's complaint to determine whether a probative nexus exists between her complaint and the material being sought. Ms. Merhi is acting on her own behalf and is not representing anyone else.

[19] In their written submissions, the parties numbered Ms. Merhi's various document production requests. The Board will use the same numbering scheme to consider each of the requests without repeating the full descriptions of the 17 requests.

1. Introduction of MDMs

- The Board accepts the Bank's position. The documentation "contemporaneous with the closing of the MDM department" (translation) will be produced by the SEPB and the Bank. The 2012 letter of understanding refers to an understanding reached on March 22, 2006. Production of that document and the collective agreement in effect prior to the agreement of 2012–2017 will be required.

2. Discussions between the President of the SEPB and the person responsible at the Bank

- The Board accepts the Bank's position and orders production of the material.

3. Discussions between the union and the Bank respecting the letter of understanding of October 2, 2013

- The Board orders production of the material.

4. Discussions held immediately following the signing of the letter of understanding of October 2, 2013

- The Board orders production of the material.

5. Requests by other MDMs

- Not relevant to Ms. Merhi's complaint. Ms. Merhi is acting on her own behalf in this matter and is not representing any other MDMs.

6. Grievances filed by former MDMs

- Not relevant.

7. Complaints filed by other MDMs

- Not relevant.

8. Letters of offer of employment of MDMs

- Not relevant.

9. Amendments to letters of understanding concerning MDMs

- Request allowed in respect of the letters of understanding of 2012 and 2013.

10. Documentation relating to other MDMs

- Not relevant.

11. Documents relating to the telebanking centre

- Not relevant.

12. Documents relating to “the introduction of the new mortgage advisor line” (translation)

- Not relevant.

13. Complaints from other employees regarding their commissions

- Not relevant to a section 37 complaint.

14. Petition signed by employees

- Not relevant to the complaint as drafted.

15. Collective agreements since 2000

- The Board has directed that the collective agreement in effect prior to the agreement of 2012–2017 be produced. No other collective agreement is relevant.

16. SEPB financial statements since 2000

- Not relevant to the instant section 37 complaint.

17. Dues paid to the SEPB by former MDMs since October 2, 2013

- The Board orders production of the material. However, the SEPB may withhold the identity of the persons concerned.

IV. Order

[20] The Board orders the SEPB and the Bank to produce the documents indicated in this decision by November 24, 2014.

[21] Should one of the parties require a formal Board order, it may submit it to the Board in draft form, approved as to form and content by the other parties.

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

Translation

Graham J. Clarke
Vice-Chairperson

Richard Brabander
Member

Norman Rivard
Member