Psychological harassment: The extent of employers' obligations in handling complaints

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On May 6, 2024, Arbitrator Isabelle Leblanc rendered her decision in *Syndicat des travailleurs et travailleurs de Rolls-Royce Canada – CSN c. Rolls-Royce Canada Ltée* (2024 CanLII 40021; French-only) regarding a psychological harassment grievance filed by an employee against his immediate superior.

In that decision, Arbitrator Leblanc rejected the grievance and provided very interesting clarifications, particularly with respect to the employer's obligations in administering a grievance for psychological harassment, the obligation to investigate and the admissibility of facts subsequent to the filing of the grievance (the continuum theory).

Brief review of the facts

On July 1, 2020, the complainant filed a grievance against his immediate superior. to report a situation of psychological harassment following a culminating event on June 30, 2020.

Upon receipt of the grievance, the employer requested clarification regarding the allegations of psychological harassment, as no details were provided on the grievance form. Nearly four months later, the complainant provided a more detailed document regarding the allegations he had made against his manager at the time. The incidents allegedly took place over a period of approximately three months, from April to June 2020. In this document, the complainant repeatedly challenged his superior's decisions and attitude toward him.

Note that when these details were submitted, the complainant was no longer in contact with the respondent, owing to a shift change that occurred a few weeks earlier.

Various circumstances resulted in a significant delay in handling the complaint; two and a half years later, in January 2023, an external investigation firm was engaged to investigate the complainant's allegations against his former superior to determine whether workplace harassment had occurred. Following the external investigation, the investigators concluded that the complainant's allegations against the respondent failed to meet the bar of psychological harassment within the meaning of the *Act respecting labour standards* (the "ALS") and the employer's internal policy.

At issue

The arbitrator was required to rule not only on the merits of the allegations of psychological harassment but also on the employer's conduct in handling the complaint, given the delays in handling the grievance. The union alleged that the employer had failed to fulfil its obligations under section 81.19 ALS and requested that the arbitrator issue orders in this regard. The union claimed, in particular, that section 81.19 ALS inherently included a duty for the employer to investigate reports of psychological harassment as soon as the grievance was filed, notwithstanding the lack of details regarding the allegations of psychological harassment.

In addition, to support his claims and thereby attempt to demonstrate that workplace harassment had occurred, the complainant sought to file in evidence a bundle of facts subsequent to the grievance, i.e., nearly two years after filing it. The employer objected, alleging not only that these facts had occurred subsequent to the filing of the grievance, but also that they did not pertain to the original allegations.

Highlights of the arbitrator's decision

1. Personality conflicts do not amount to psychological harassment

After a detailed analysis of each of the complainant's allegations, Arbitrator Leblanc concluded that, overall, there was no situation of psychological harassment, even if some of the allegations individually constituted vexatious conduct by the respondent toward the complainant, in light of the law and the evidence on the record. On the whole, the arbitrator concluded that there was an interpersonal conflict between the complainant and his superior, not an instance of psychological harassment *per se*.

Most of the complainant's allegations concerned the manner in which his superior exercised his management rights. In particular, the complainant alleged that the superior acted arbitrarily by treating him differently from his colleagues. In the arbitrator's view, the complainant did not behave like a victim: on the contrary, in the situations described by the complainant himself, he placed himself on an equal footing with and was rebellious toward his superior.

In short, while some of the allegations could constitute hostile or unwanted conduct if taken and analyzed individually, the arbitrator determined that, based on the overall analysis, the respondent did not psychologically harass the complainant.

2. The arbitrator cannot assess the employer's alleged negligence in handling the grievance

The union alleged that the employer had been negligent in failing to conduct a timely investigation after the grievance was filed, only to find no harassment and wait some two and a half years before engaging an external firm to investigate. In the union's view, the employer had breached its obligation under section 81.19 ALS to put a stop to psychological harassment whenever it becomes aware of such behaviour, thereby failing to handle the grievance diligently.

On this point, the arbitrator rejected the union's arguments and ruled that [translation] "the obligation to take reasonable measures to prevent and put a stop to harassment rests on an inherent and prior obligation to assess whether there is a situation of harassment[.]" In other words, where no psychological harassment exists, the employer cannot be blamed for having failed to fulfil its obligation to prevent or put a stop to psychological harassment under section 81.19 ALS.

Arbitrator Leblanc also stated that the wording of section 123.15 ALS, which sets out the arbitrator's powers of intervention in psychological harassment matters, clearly stipulates that [translation] "before issuing an order, it must be concluded that the person concerned is a victim of harassment **and** that there is a violation of the obligations set out in section 81.19 of the Act[.]"

3. The inadmissibility of facts subsequent to the grievance due to a lack of continuity

On the issue of subsequent facts, the arbitrator allowed the employer's objection and refused to admit into evidence the plaintiff's document and the facts relating to it. The arbitrator noted at the outset that [translation] "an employer's obligations regarding psychological harassment are continuous in nature and justify that certain subsequent facts be considered by the grievance arbitrator[.]" However, the arbitrator also stated that subsequent facts can only be admitted if they bear witness to a continuum of harassment or if they relate in some way to the initial facts. In this case, as no allegation relates to the period between late 2020 and Nov. 2022, there is no continuum of the harassment initially reported by the grievance. In addition, the facts do not relate to the original facts and do not clarify or shed light on the situation at the time the grievance was filed, even if the allegations are of the same or a similar nature.

Key takeaways

This is a reassuring decision for employers, as it confirms that an arbitrator is not empowered to issue orders under section 81.19 ALS where a finding of psychological harassment has not been made.

Employers are also sure to welcome Arbitrator Leblanc's clarification that facts subsequent to the grievance can only be admitted when there is a continuum of harassment or a relation to the initial facts, since the very nature of psychological harassment can complicate this issue.

However, this decision also reminds employers that certain situations, such as a change in managers, can often shift the work dynamic and lead to conflicts. Such situations ought to be handled proactively to avoid escalations, including psychological harassment complaints. Even if they are proven to be unfounded, such complaints can take a major toll, not just financially but also on the people involved.

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