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*Public Service
Labour Relations Act*

Before the Chairperson
and an adjudicator

BETWEEN

SATPAL VIRDI

Applicant/Grievor

and

**TREASURY BOARD
(Department of Human Resources and Skills Development)**

Respondent/Employer

Indexed as

Viridi v. Treasury Board (Department of Human Resources and Skills Development)

In the matter of a grievance referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act* and an application for an extension of time referred to in paragraph 61(b) of the *Public Service Labour Relations Board Regulations*

REASONS FOR DECISION

Before: Ian R. Mackenzie, Acting Chairperson and adjudicator

For the Applicant/Grievor: None

For the Respondent/Employer: Stephan J. Bertrand, counsel

Heard at Regina, Saskatchewan,
October 16, 2006.

REASONS FOR DECISION

Application before the Chairperson and grievance referred to adjudication

[1] Satpal Viridi was rejected on probation from his position as an investigation and control officer with the Department of Human Resources and Skills Development Canada (HRSDC) on February 25, 2004. He was in a bargaining unit represented by the Public Service Alliance of Canada and was represented by his bargaining agent throughout the grievance process. The final-level response was issued by the employer on August 25, 2005. Mr. Viridi filed a reference to adjudication on January 12, 2006, on his own behalf. The employer objected to the timeliness of this reference to adjudication. Mr. Viridi made an application for an extension of time to refer a grievance to adjudication pursuant to paragraph 61(b) of the *Public Service Labour Relations Board Regulations*, and a hearing was scheduled to determine this preliminary matter

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

[3] The hearing was scheduled for October 16 to 18, 2006, in Regina, Saskatchewan. Mr. Viridi was advised in correspondence from the Public Service Labour Relations Board ("the Board"), dated August 7, 2006, of the scheduled dates. Mr. Viridi also received a Notice of Hearing on October 3, 2006. The Notice of Hearing states that, if a party fails to attend the hearing, the Board ". . . may dispose of the matter on the evidence and representations: at the hearing . . . without further notice." Mr. Viridi did not show up at the commencement of the hearing on October 16, 2006. I contacted Registry Operations at the Board and requested that they contact Mr. Viridi by telephone. I was advised that there was no answer at his home telephone number and that his cell phone voicemail box was full. I also ascertained that Mr. Viridi had not contacted the Board to provide any reason for his absence from the hearing. I delayed the start of the hearing for one hour but Mr. Viridi did not show up.

[4] In the absence of Mr. Viridi, I asked for submissions from counsel for the employer. Counsel submitted that the onus of justifying an extension of time rested with the grievor and that on the face of the record before me the grievor had not met this onus. Counsel reviewed the five criteria set out in the Board's jurisprudence:

1) a clear, cogent and compelling reason for the delay; 2) the length of the delay; 3) due diligence of the applicant; 4) the injustice to the employee balanced against the prejudice to the employer; and 5) the chance of success of the grievance (*Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1.

[5] Counsel argued that there was no clear, cogent and compelling reason for the delay in filing the reference to adjudication. In correspondence to the Board dated April 7, 2006, the grievor stated that he had provided a change of address to the Employment Insurance Office at the HRSDC. Counsel submitted that providing such notice was a far cry from saying that he had advised his former employer of his change of address. There is also no evidence on the record that the grievor advised his bargaining agent of his change of address, even though he continued to be represented by the bargaining agent throughout the grievance process.

[6] Counsel submitted that a delay of six months was lengthy.

[7] Counsel argued that the grievor had not demonstrated due diligence in pursuing his rights. Due diligence would have included contacting his former employer and bargaining agent to determine if a decision had been made with regard to his grievance. Also, his failure to advise his former bargaining agent of his change of address was not due diligence.

[8] With regard to the balancing of injustice to the employee against the prejudice to the employer, counsel submitted that the onus rested on the grievor to make this argument, and that he had not met this onus.

[9] Counsel argued that the chance of success in a grievance against a rejection on probation was low.

[10] Counsel submitted that the application for an extension of time should be dismissed.

[11] Counsel argued, in the alternative, that the grievance should be dismissed for want of prosecution. Although the onus in a grievance against rejection on probation does initially rest with the employer to show employment-related reasons for the rejection, the grievor was not present to meet his burden of proving bad faith or camouflage.

[12] After hearing the submissions of the employer I adjourned the hearing and reserved my decision. I advised the employer that, unless the Board was advised of a reasonable excuse by the grievor for his absence at the hearing, I would proceed to issue a decision based on the submissions I had received.

[13] By October 27, 2006, Mr. Viridi had not communicated to the Board his reason for not attending the hearing. Accordingly, I have proceeded to render my decision in this matter.

[14] There is no evidence to support granting an application for an extension of time. There is no clear, cogent or compelling reason for the six-month delay in referring this matter to adjudication. When a grievor changes his or her address, he or she is under an obligation to advise either the employer or the bargaining agent, preferably both. In this case, based on correspondence on file with the Board, it appears that Mr. Viridi did not advise his employer, but, rather, advised the Employment Insurance Office. Mr. Viridi did not exercise due diligence. Due diligence would have included advising his bargaining agent of his change of address or following up with his bargaining agent or employer soon after the employer was supposed to issue a final-level response to his grievance. Given this failure to meet four of the criteria, I do not need to assess the final criterion of the chance of success of the grievance. Since I heard no evidence from the grievor, it is difficult to comment on this criterion in any event.

[15] Accordingly, the application for an extension of time to refer a grievance to adjudication is dismissed. Given that, because of the grievor's failure to meet the time limits, an adjudicator is without jurisdiction to hear the grievance, the grievance is also dismissed.

[16] For all of the above reasons, I make the following order:

(The Order appears on the next page)

Order

[17] The application for an extension of time is dismissed.

[18] The grievance is dismissed.

November 8, 2006

**Ian R. Mackenzie,
Acting Chairperson
and adjudicator**