Date: 20060814

File: 568-02-00024

Citation: 2006 PSLRB 96

Public Service
Labour Relations Act

Before the Chairperson

BETWEEN

PAUL VIDLAK

Applicant

and

TREASURY BOARD
(Canadian International Development Agency)

Respondent

Indexed as
Vidlak v. Treasury Board (Canadian International Development Agency)

In the matter of 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: Sylvie Matteau, Chairperson

For the Applicant: Himself

For the Respondent: Lourena Prud'homme

Decided without hearing.

Application before the Chairperson

[1] Paul Vidlak, the applicant, wrote to the Public Service Labour Relations Board (PSLRB), on November 15, 2005, requesting an extension of time to file a grievance "... with respect to the treatment [he] received from management of the Central & Eastern Europe Branch of the Canadian International Development Agency [CIDA] in 2002".

[2] In his letter, the applicant recognized that a "fair amount of time [had] elapsed since then". However, he submitted that there were "extenuating and documented reasons" for this delay.

[3] The respondent provided a response to the application on March 16, 2006, opposing the application, as it "significantly exceeded" the time limits provided for in the collective agreement. In its opinion, there is no evidence that the grievor had ever indicated that he planned on filing a grievance. The employer raised five issues in its objection: 1) that the grievor had not met his burden of proof in establishing valid reasons supporting an exercise of discretion by the Board; 2) that the grievor had significantly exceeded the time limits; 3) that the grievor had not been employed by the CIDA for 2.5 years; 4) that that there was no evidence that the grievor had ever indicated his intention to file a grievance; and 5) that the delay would cause great prejudice to the employer. The applicant responded, on March 23, 2006, that he was prepared to meet his burden of proof in a hearing. On May 1, 2006, the employer wrote to the PSLRB to reiterate its objection and, in accordance with s.15(1) of the *Public Service Labour Relations Board Regulations* (the *Regulations*), to request particulars on the part of the applicant.

[4] The PSLRB then requested that the applicant provide, in writing, a fully detailed narrative and arguments in support of his application. This document was filed by the applicant on May 23, 2006. Correspondence ensued and the PSLRB decided to issue a decision on the basis of the written submissions from the parties, considering that the fundamental facts surrounding this issue are not in dispute.

[5] When the PSLRB initially received Mr. Vidlak's application, it notified both the employer and the Public Service Alliance of Canada (PSAC) that such application had been filed. The PSAC responded on March 16, 2006, advising the PSLRB that it took no position with respect to this application. In later correspondence it advised that it had

declined to represent the applicant. This correspondence was dated June 26, 2006, and was forwarded after the PSLRB had forwarded the latest correspondence from the applicant to the PSAC for further comments.

Summary of the evidence

[6] The applicant was an employee of the CIDA. In July 2001 he was seconded to Human Resources Development Canada (HRDC), as it was then known, from CIDA, and in July 2003, he accepted a deployment to HRDC.

[7] In his letter of May 23, 2006, the applicant states basically two reasons to explain why he did not file a grievance within the specified timeframe:

. . .

> 1) *I am not a confrontational individual. In my twenty five years of service to the people of Canada, I have never come close to filing a grievance against management. If anything, I give it the benefit of doubt. I did precisely this during my entire tenure at CIDA. I did it when I received the written directive from Director Lemelin in January 2001 to look for another job, although I went as far as pointing out to him that his directive was unfair and uncalled for. I did seek assistance from senior union officials (Mr. Bernier) with certain questions, but no one counseled me that I should file a grievance.*
>
> 2) *As stated, I tended to give the benefit of doubt to management in an attempt to maintain harmonious interpersonal relations. That is why I sought out a secondment rather than contesting or disregarding the directive. Things changed however when I finally received a copy of BMCI's report, dated April 2004 but received from CIDA after several attempts only in February 2005. This report was originally commissioned by Minister Whelan in November 2003 in response to my five page letter to her in October outlining my concerns with CEE Branch management practices and its treatment of myself.*

. . .

[8] He adds:

. . .

> *BMCI's report confirmed and supported all my concerns, thereby confirming that management's response to*

> *my project management concerns and protests were spiteful, ill-founded and unwarranted and as a consequence, Director Lemelin's directive was without merit. I continued to attempt to settle my dispute on a mutually acceptable basis with the employer unsuccessfully. I am therefore, as a last resort, seeking an extension of time within which to file a grievance to contest management's unfair treatment.*
>
> *I further respectfully submit that the employer's claim that granting my request would cause it "great prejudice" is without merit. The persons that played a role in this matter are all still alive and available to testify, the records are all available, and I am sure that it would prefer that justice be seen to be done by allowing an independent party to pronounce itself on the merits of this dispute.*
>
> *I believe that the above narrative fulfills the employer's request for the particulars explaining the delay in my filing a grievance and trust that the Board will concur.*
>
> . . .

[9] The respondent, in its letter of May 1, 2006, had emphasized that, if granted, this procedure would cause great prejudice in preparing a proper defence, considering that four years had elapsed since the alleged incident occurred in 2002. The respondent also pointed out that it was no longer the employer of the applicant, and that there was no evidence that the applicant ever indicated that he had planned on filing a grievance.

Reasons

[10] The applicant has failed to provide cogent reasons explaining the delay and justifying why he should be relieved of the consequences of his failure to file a grievance on time. Even if I were to accept that the date of his receipt of the BMCI report could be used as the date for the calculation of the delay for filing the grievance, the applicant is still nine months late and has provided no explanation for this delay, except to say that he has a non-confrontational personality.

[11] The jurisprudence of the former Public Service Staff Relations Board (PSSRB), the precursor of the present PSLRB, is long-established in matters of allowing or denying an application such as this one. The new *Public Service Labour Relations Act* (*PSLRA*), which established the PSLRB states that an extension of time can be granted in the interest of fairness. Under s.63 of the former *PSSRB Regulations and Rules of Procedures,* 1993, the PSSRB had the power to extend time limits "on such terms and

conditions" as the PSSRB deemed advisable. Over the years,, the PSSRB developed principles concerning the application of this section, which principles are of the same nature as the fairness doctrine contained in paragraph 61(*b*) of the new *Regulations*. As such, the PSLRB is still relying on the criteria that were developed over the years to assist decisions made in this regard.

[12] *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, provided an analysis of the case law up to that time and identified the following basic criteria for determining whether to exercise the PSSRB's discretion under subsection 63(*b*) of the former *Public Service Staff Relations Board Regulations* (now 61(*b*) of the new *Regulations*):

- *clear, cogent and compelling reasons for the delay;*
- *the length of the delay;*
- *the due diligence of the grievor;*
- *balancing the injustice to the employee against the prejudice to the employer in granting an extension; and*
- *the chance of success of the grievance.*

The fact that the applicant had what he refers to as a non-confrontational personality is not a clear, compelling and cogent reason for the delay. As stated above, the delay is, at best, one of nine months which, given the time limits for filing, is quite lengthy. The applicant has not proven due diligence on his part nor chance of success in any way. Further, the employer has addressed the issue of prejudice to it by giving reasons in support of its position on this issue.

[13] The applicant has mentioned that he tried to settle his dispute on a mutually acceptable basis, but was unsuccessful. In *Pomerleau v. Treasury Board (Canadian International Development Agency)*, 2005 PSLRB 148, I addressed this very important issue relating to informal conflict resolution attempts. I repeat here that no one, whether the employer or the employee, should be criticized or penalized for taking this approach. However, because informal dispute resolution approaches coexist with the formal dispute resolution procedures, any deadline for exercising the latter cannot be ignored and compliance with filing deadlines is the responsibility of the grievor. Again, where a right to a formal process exists and is subject to prescriptive extinction, the wiser course will always be to take the informal route and to secure access to the formal right at the same time. Otherwise, the PSLRB has very limited powers to correct such shortfalls.

[14] Finally, there is no evidence that the applicant was misguided by his bargaining agent representative. The comment made by the applicant in his letter of May 23, 2006, regarding the fact that no one counselled him to file a grievance does not meet his burden of proof on any of the criteria enumerated in *Schenkman*. The applicant has provided the PSLRB with no details regarding his communications with his bargaining agent and I am therefore unable to conclude, on a balance of probabilities, that his bargaining agent's advice resulted in an unfairness to him. At present, his comments on this issue are mere allegations and not proof.

[15] Considering that I have found that, in the case at hand, there are no clear, cogent and compelling reasons for the delay of four years, or even nine months, as argued by the applicant, and that there is no indication that he exercised due diligence in the filing of this application or that his grievance has even a credible chance of success, I find that the applicant has not met his burden and has not shown that the deadlines should be extended in the interest of fairness. As for the other factor of prejudice to the employer, there is no need to take it into account under the present circumstances, the first factors being sufficient to evaluate and deny the application.

[16] For all of the above reasons, the PSLRB makes the following order:

(The Order appears on the next page)

Order

[17] The application for an extension of time to file a grievance is denied.

August 14, 2006.

Sylvie Matteau,
Acting Chairperson