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File: 568-02-144

Citation: 2007 PSLRB 83



*Public Service  
Labour Relations Act*

Before the Chairperson

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BETWEEN

**JADWIGA MAJDAN**

Applicant

and

**TREASURY BOARD**  
**(Department of Public Works and Government Services)**

Respondent

Indexed as  
*Majdan v. Treasury Board (Department of Public Works  
and Government Services)*

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:*** Michele A. Pineau, Vice-Chairperson

***For the Applicant:*** Karine M. Pelletier, counsel, Professional Institute of the Public Service of Canada

***For the Respondent:*** Monique Licari, counsel

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Decided on the basis of written submissions filed  
January 26, March 21 and April 5, 2007.

## REASONS FOR DECISION

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### **Application before the Chairperson**

[1] This decision deals with an objection from the Treasury Board (Department of Public Works and Government Services) (“the employer”) to the jurisdiction of the Public Service Labour Relations Board (“the Board”) to hear this reference to adjudication because it is untimely.

[2] Pursuant to section 45 of the *Public Service Labour Relations Act* (“the new Act”), the Chairperson has authorized me, in my capacity as Vice-Chairperson, to exercise any of his powers or to perform any of his functions under paragraph 61(b) of the *Public Service Labour Relations Board Regulations* (“the Regulations”) to hear and decide any matter relating to extensions of time.

[3] The grievor, Jadwiga Majdan, filed a grievance on April 4, 2004. The employer replied to the grievance at the final level on May 25, 2006. The bargaining agent, on Ms. Majdan’s behalf, filed the reference to adjudication on December 11, 2006, more than six months after the decision at the final level.

### **Summary of the arguments**

[4] The employer argues that the reference to adjudication is untimely, as section 76 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993* (“the former Regulations”) provides that a reference under section 92 of the *Public Service Staff Relations Act* must be made no later than the thirtieth day after the day on which the employee received a reply at the final level of the grievance process.

[5] The bargaining agent submits that the reference to adjudication is timely because the final response to the grievance was not in fact final. The Acting Assistant Deputy Minister, who replied at the fourth level, upheld the grievance and directed the grievor’s managers to update her work description and provide her with a copy once it was completed. The bargaining agent submits that the employer’s response was conditional on the grievor obtaining an updated job description. The bargaining agent’s position is that the employer’s decision became final once the updated job description was given to the grievor on or about November 3, 2006.

[6] The bargaining agent takes the view that it would have been premature to refer the matter to adjudication before the job description was finalized, since the latter could have ultimately led to the resolution of the grievance. Therefore, rather than

filing the reference to adjudication within the 30 days following the employer's final-level response, the bargaining agent and the grievor decided to wait for the updated work description. Given that the updated job description does not adequately reflect the grievor's work, it is appropriate that the grievance now be referred to adjudication.

[7] The bargaining agent argues that the employer's objection is a technical argument and that the balance of prejudice weighs in favour of hearing the reference. Otherwise, the grievor will be denied a proper remedy. Alternately, if the Board were to find that the grievance is untimely, the bargaining agent argues that the delay is not extraordinary nor is it substantial; as well, there is a reasonable explanation for it. Finally, the bargaining agent submits that the Board has the power to provide relief against such defects and should exercise that power in the circumstances of this case.

[8] The employer responds that the Acting Assistant Deputy Minister's reply indicated that it was a final-level reply when it stated that the grievance was being upheld. Consequently, the Board is without jurisdiction to hear the matter because the reference to adjudication is untimely.

### **Reasons**

[9] On April 1, 2005, the new *Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 39 of the *Public Service Modernization Act*, the Board continues to be seized with this application, which must be disposed of in accordance with the new *Act*.

[10] Nonetheless, under section 107 of the *Regulations*, the former *Regulations* continue to apply to matters initiated prior to April 1, 2005. The grievance was filed at the first level of the grievance process on April 5, 2004; therefore, the 30-day time limit for referring a grievance applies to this case. In computing whether or not a referral to adjudication is timely, reference must also be made to subsection 2(2) of the former *Regulations* that establishes how the days are to be counted:

*(2) Where a period of time is specified in these Regulations as a number of days, the period shall be computed as being the number of days specified, exclusive of Saturdays and holidays.*

[11] The employer's reply at the final level is dated May 25, 2006, while the reference to adjudication is dated December 11, 2006. Clearly, using the computing method set out in the former *Regulations*, this reference to adjudication appears untimely.

[12] The issue to be decided, therefore, is whether the reference is timely for the reasons argued by the bargaining agent, or, if it is not, whether I should exercise my discretionary power to extend the time limit.

[13] In view of the nature of the employer's redress at the final level, it is my conclusion that the reference is timely. In his response, the Acting Assistant Deputy Minister directs that the grievor's work description for her substantive position be updated and that a copy be provided to her once that is done. Consequently, the final-level response could not be considered complete until the grievor's managers had complied with the remedy of providing the grievor with an updated job description.

[14] It follows that the grievor was not in a position to assess whether the updated job description was the redress she was seeking until she received it; nor, as a consequence, could she decide whether to go forward with her grievance to adjudication until she had reviewed it. It was ostensibly premature to refer her grievance to adjudication within the 30-day period specified in subsection 76(1) of the former *Regulations* without knowing the nature of the employer's redress at the final level.

[15] As the final-level reply was conditioned by actions that were to take place in the future, it was not "final" until all of its stipulations had been satisfied. Thus, the time limit for a reference to adjudication was necessarily suspended for the period during which the redress was being finalized. On receipt of the updated job description, the time limit to refer the grievance to adjudication started to run on the date the grievor was informed of the remedy.

[16] I am satisfied that the delay in referring the grievance to adjudication was not due to the grievor's negligence or abandonment of her intention to proceed to adjudication. The delay was entirely due to the time it took for the employer to provide the grievor with a copy of the updated job description. The grievor's decision not to refer her grievance to adjudication before the job description was finalized was wise, since an appropriate job description could ultimately have led to the resolution of the

grievance. Now that it is known that the grievor is still unhappy with the updated job description, it is appropriate that the grievance be referred to adjudication.

[17] I have also considered the prejudice to the grievor. While it has often been said that time limits contribute to stability in labour relations (see *Wyborn v. Parks Canada Agency*, 2001 PSSRB 113), they must not be applied in such a way as to cause an injustice to the grievor, especially where the employer has not raised a prejudice.

[18] In this case, the long-term prejudice to the grievor of not having an adequate job description outweighs any prejudice to the employer attributable to the passage of time.

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

*(The Order appears on the next page)*

**Order**

[20] The employer's objection is dismissed.

[21] The Director, Registry Operations, is to contact the parties to set a date to resume the hearing on the merits.

August 10, 2007

**Michele A. Pineau,  
Vice-Chairperson**