

Date: 20090929

File: 568-02-190

Citation: 2009 PSLRB 115



*Public Service
Labour Relations Act*

Before the Chairperson

BETWEEN

**DEPUTY HEAD
(Public Health Agency of Canada)**

Applicant

and

SAWSAN SHARAF

Respondent

Indexed as
Deputy Head (Public Health Agency of Canada) v. Sharaf

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: [Ian R. Mackenzie, Vice-Chairperson](#)

For the Applicant: [Virginie Emiel-Wildhaber, counsel](#)

For the Respondent: [Herself](#)

Decided on the basis of written submissions
filed August 14 and September 8 and 21, 2009.

I. Application before the Chairperson

[1] The Deputy Head of the Public Health Agency of Canada (PHAC or “deputy head”) has requested an extension of time to raise an objection on the timeliness of a grievance alleging disciplinary action (PSLRB File No. 566-02-2868).

[2] Pursuant to section 45 of the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, 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.

II. Background

[3] The grievance was referred to adjudication on April 29, 2009. The acknowledgement letter from the Public Service Labour Relations Board (“the Board”) to the PHAC representative and to the grievor was sent on May 11, 2009. In that standard acknowledgment letter, the parties were asked to determine if they wanted the grievance referred to mediation, and the deputy head was reminded of its obligation, under the *Regulations*, to provide copies of the grievance replies within 30 days of the referral, or June 10, 2009.

[4] Counsel for the deputy head replied on May 29, 2009, stating that the deputy head was not interested in mediation. Counsel did not raise the timeliness of the grievance in her correspondence. An acknowledgement of the response was sent to the parties by the Board on June 2, 2009.

[5] On July 8, 2009, the Board sent an email to the counsel for the deputy head reiterating the request for the grievance replies. Counsel for the deputy head responded on July 13, 2009 that the Treasury Board Secretariat (TBS) had not received “. . . the official mandate to manage the file” on behalf of the deputy head and that the official contact for the file remained with the deputy head. The Board was referred to an official of the PHAC.

[6] On July 16, 2009, a labour relations advisor with the PHAC raised a number of objections, including an objection to the timeliness of the grievance.

[7] In correspondence to the Board dated July 27, 2009, the grievor submitted that the objection to timeliness should be dismissed because the deputy head had failed to raise an objection within the 30-day time limit prescribed by the *Regulations*.

[8] The *Regulations* require the deputy head to raise objections to the timeliness of a grievance at each step of the grievance process and within 30 days of the referral to adjudication as follows:

...

95. (1) A party may, no later than 30 days after being provided with a copy of the notice of the reference to adjudication,

(a) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the presentation of a grievance at a level of the grievance process has not been met;

...

Objection may not be raised

(2) The objection referred to in paragraph (1)(a) may be raised only if the grievance was rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.

Objection raised

(3) If the party raises an objection referred to in subsection (1), it shall provide a statement in writing giving details regarding its objection to the Executive Director.

...

[9] The grievance was filed on December 8, 2008. The deputy head sent a letter to the grievor on January 27, 2009 advising that it regarded the grievance as untimely. The only grievance reply was at the final level. In that reply, the deputy head noted that it viewed the grievance as untimely.

[10] The deputy head failed to raise its objection with the Executive Director within 30 days of the referral to adjudication, in accordance with paragraph 95(1)(a) of the *Regulations*. On August 14, 2009, the deputy head requested an extension of time to file its objection.

III. Summary of the arguments

[11] The written submissions are on file with the Board. I have summarized the submissions in the paragraphs that follow.

A. For the deputy head

[12] The deputy head submitted that the PHAC had forwarded the documentation for this grievance to the TBS in early June 2009. However, the TBS never received the documentation and assumed that the PHAC was going to manage the file. Due to this miscommunication and the fact that the documentation was not received by the TBS, the deadline to raise the objection was missed. As soon as the error was realized, the objection to timeliness was made.

[13] At no time did the deputy head abandon its position with respect to timeliness, and the grievor was made aware of the objection from the outset and on other numerous occasions.

[14] The grievor will not be prejudiced by granting an extension of time as she had been made aware of the objection from the very beginning of the grievance process.

B. For the grievor

[15] The deputy head did not provide a clear, cogent or compelling reason for requesting an extension of time to raise its objection to the timeliness of the grievance. The Board should not grant the request.

[16] Prior to its reply to the reference to adjudication on July 16, 2009, the deputy head failed to raise an objection to timeliness within the time limit established in the *Regulations*. That objection should have been made no later than June 10, 2009. The objection is clearly out of time, and the delay of more than one month in raising the objection is significant.

[17] Counsel for the TBS has been included in all the Board's notices from the outset. Counsel for the TBS saw the initial letter of the referral to adjudication dated May 11, 2009, and in fact responded to that letter on May 29, 2009. To respond to the letter, the content of the letter and the grievance would have been fully discussed. A due diligence effort on the part of the deputy head's representatives would have been

conducted. In addition, the deputy head has more than adequate legal and human resources capacity to raise the objection in a timely manner.

[18] The injustice caused to the grievor by granting the deputy head an extension of time to raise an objection to timeliness, which is questionable at best, is more severe than any prejudice caused to the deputy head.

IV. Reasons

[19] The deputy head is requesting an extension of the time limit to raise an objection to the timeliness of a grievance. The *Regulations* require that the deputy head raise its objection within 30 days of the referral to adjudication of a grievance. The deputy head raised its objection approximately two months after the referral to adjudication.

[20] The relevant factors to consider in an application for an extension of time are the following: clear, cogent and compelling reasons for the delay; the length of the delay; the due diligence of the applicant; balancing the injustice to the applicant against the prejudice to the respondent in granting the extension; and the chances of success. As noted in *Gill v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 81, not all factors are relevant in each case or will necessarily receive equivalent weight.

[21] The applicant must provide a clear, cogent and compelling reason for its failure to meet the time limit as prescribed in the *Regulations*. The reason provided by the deputy head does not meet this test. In essence, the reason given for the delay was an administrative oversight. The regulatory requirement is clear, and an administrative oversight such as this cannot be a compelling reason for granting an extension. If administrative oversight were accepted as a legitimate reason for extending time limits in the *Regulations*, those time limits would soon lose all meaning.

[22] The delay for raising the objection was 15 days after the deadline set out in the *Regulations*. In the context of a referral to adjudication, this is not insignificant.

[23] The deputy head did not exercise due diligence in raising the objection. If the documentation had been reviewed in a timely manner by the deputy head, it would have been obvious that an objection should be raised. In addition, the PHAC was

clearly aware of the timeliness issue, as it had raised timeliness in the grievance process.

[24] In my view, there is no need to look at the factor of prejudice to the other party where no cogent or compelling reason for the delay has been provided. In light of the requirement in the *Regulations*, the failure to raise the timeliness issue in a timely manner is the equivalent of a waiver by the deputy head, and the grievor is entitled to rely on that waiver.

[25] The chance of success of the objection is not a relevant consideration since the objection does not relate to the merits of the grievance.

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

(The Order appears on the next page)

V. Order

[27] The application for an extension of time to object to the timeliness of the grievance (PSLRB File No. 566-02-2868) is dismissed.

September 29, 2009.

**Ian R. Mackenzie,
Vice-Chairperson**