Date: 20090724

File: 568-02-182 and
566-02-1741 and 1742

Citation: 2009 PSLRB 92

Public Service
Labour Relations Act

Before the Vice-Chairperson
and an adjudicator

BETWEEN

PHILIP GROUCHY

Applicant and Grievor

and

DEPUTY HEAD
(Department of Fisheries and Oceans)

Respondent

Indexed as
Grouchy v. Deputy Head (Department of Fisheries and Oceans)

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* and individual grievances referred to adjudication.

REASONS FOR DECISION

Before: Marie-Josée Bédard, Vice-Chairperson and adjudicator

For the Applicant and Grievor : Thomas C. Turner, counsel

For the Respondent: Adrian Bieniasiewicz, counsel

Heard at St. John's, Newfoundland,
June 24, 2009.

I. Application before the Chairperson

[1] Philip Grouchy ("the grievor") works for the Department of Fisheries and Oceans ("the employer") and holds the position of Supervisor of Documentation Information Management (classified CR-05). In June 2005, the employer reassigned him to another work unit while it undertook an investigation pertaining to complaints of harassment in the workplace. One of the complaints was filed by the grievor, and another one was filed by a fellow employee against the grievor. On June 27, 2005, the grievor filed a grievance challenging the employer's decision to reassign him (file 566-02-1741).

[2] On November 5, 2006, the grievor filed another grievance challenging the investigation process put in place by the employer, as well as the final investigation reports prepared by the external investigators who performed the investigation (file 566-02-1742).

[3] The employer's decisions at the final level of the grievance process for both grievances were issued on October 4, 2007, and were received by the grievor on October 22, 2007. The grievor referred his grievances to adjudication before the Public Service Labour Relations Board ("the Board") on January 16, 2008.

[4] On February 14, 2008, the employer filed a letter with the Board in which it alleged that the grievances were not referred to adjudication within the prescribed 40 day time limit set by section 90 of the *Public Service Labour Relations Board Regulations* (DORS/2005-79) ("the *Regulations*"). In addition to the timeliness issue, the employer alleged that the grievances were not adjudicable because the matters raised in them do not fall within the matters referable to adjudication under section 209 of the *Public Service Labour Relations Act*, S.C. 2003, c.22 ("the *Act*").

[5] On March 4, 2008, the grievor filed an application for an extension of time to refer his grievances to adjudication.

[6] A hearing was held on June 24, 2009. Before the hearing, the Board informed the parties that the hearing would be limited to the grievor's application for an extension of time and to the employer's jurisdictional objection. Only the grievor adduced evidence on the timeliness issue. No evidence was presented on the jurisdictional objection, but both parties made verbal arguments. I informed the parties that I would deal with the timeliness issue first and that I would issue a

decision concerning the jurisdictional issue only if I decided to grant the extension of time.

[7] Paragraph 61(*b*) of the *Regulations* empowers the Chairperson of the Board to extend the prescribed time limit to present a grievance at any level of the grievance process or to refer a grievance to adjudication. Pursuant to section 45 of the *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 *Regulations* to hear and decide any matter relating to extensions of time.

II. Summary of the evidence

[8] The grievances filed with the Board contain documents that explain the course of events that led to their filing.

A. Grievance 566-02-1741

[9] In the grievance filed on June 27, 2005, the grievor challenges the employer's decision to reassign him during the investigation into complaints of harassment in the workplace. The grievance reads as follows:

> *A decision of management has adversely affected my Terms & Conditions of employment. On June 23, 2005 the Director of IMITS told me to report to Finance and Administrative Services Branch on monday* [*sic*] *morning June 27, 2005 for work. As my expertise is in Doc. mgt. & my job is in Doc. mgt., I want to continue working in Doc. mgt. Also, I claim that under the legislation which controls Duty to Accommodate, I am entitled to remain in my current substantive position.*

[10] The grievor requested the following corrective action:

> *1. That Duty to Accommodate be respected & that I be permitted to continue doing my job as CR-5, Supervisor of Document Management.*
>
> *2. That I be granted a hearing at every level of the grievance process.*

[11] The grievance was heard at the second level of the grievance process on March 23, 2007. The employer's decision following that hearing, dated April 17, 2007, reveals the circumstances that led to the grievor's reassignment and reads as follows:

. . .

> *In your grievance you alleged that management has affected your terms and conditions of appointment and that you should remain in your position located in the Document Management Section. You will recall that in early 2004 you participated in Early Conflict Resolution (ECR) sessions with staff of the Document Management Section in an effort to clarify and strengthen working relationships. Despite attempts to resolve these issues, they persisted in the section. Given the seriousness of this matter and in an effort to address obstacles, management concluded an outside professional investigator would be engaged to determine the underlying issues. Once the findings of the investigator were known it was management's intention to take whatever steps were necessary to promote a healthy and productive work environment.*
>
> *While the investigation was on-going, management further determined it would be in the best interest of all employees in the Document Management Section, to temporarily re-assign you effective June 27, 2005, to a joint IM&ITS-Communications Branch project titled "MY DFO". After a thorough review of the circumstances in the Document Management Section at the time, I cannot find any reason to conclude management had not proceeded properly or had violated your terms and conditions of employment by temporarily assigning you to other duties.*

[12] That decision was confirmed at the final level of the grievance process on October 4, 2007.

B. <u>Grievance 566-02-1742</u>

[13] The second grievance, filed by the grievor on November 5, 2006, reads as follows:

> *A process put in place by management was conducted in an improper manner and may adversely affect the terms and conditions of my employment. I hereby file* [*sic*] *grievance against the three final reports of investigation into allegations of harassment as provided by J. Simkins & Associates on the grounds that the investigation was not conducted in a fair and equitable manner for all parties.*

[14] The corrective actions sought are as follows:

> *1. The planned disciplinary hearing resulting from J. Simkins & Associates' investigation reports to be dismissed as conclusions contained in the reports are incomplete.*

> *2. In the interest of fairness to all parties, a new investigative committee be established comprised of one member of management* [*sic*] *choosing, one member of my choosing & one member to be mutually agreed upon by both management & myself.*
>
> *3. The above mentioned committee will be tasked to conduct a new & thorough investigation into the situation in the Doc. mgt. work unit including but not limited to the investigation of all meetings & discussions held between management and Doc. mgt. staff in which I did not attend.*
>
> *4. That I be granted a hearing at every level of the grievance process.*

[15] The employer issued a decision on the complaint on February 8, 2007, based on the investigators' reports. The investigators concluded that the grievor had harassed a co-worker, and the employer imposed an 8-day suspension on him. The decision clearly indicated that the grievor had the right to grieve the employer's decision, but the grievor did not file a grievance challenging that suspension.

[16] The hearing at the second level of the grievance process was held on April 17, 2007. I presume that, at that time, the grievor had received the employer's decision of February 8, 2007 to suspend him. Following the hearing, the employer issued a decision outlining the grievor's allegations and representations and that decision does not indicate that the grievor's suspension was ever discussed.

[17] That decision was confirmed at the final level of the grievance process, and a decision was issued on October 4, 2007.

C. <u>The application for an extension of time</u>

[18] The grievor's application for an extension of time reads as follows:

> *In response to your letter of February 21, 2008, regarding my position respecting the timeliness of my submission, I offer the following details. From the time I returned to my substantive position as Supervisor of Documentation Management Operations in July 2003 and continuing to the present day, I have been under a level of stress that has been increasing with every new hurdle placed on my path on the road to justice, I have been absent from work due to illness on several occasions over the past 4 ½ years, and have been on disability leave since June 2007.*

> *On October 16, 2007, while waiting for the third-level grievance response, I was charged with three counts of uttering threats. This charge was totally unexpected and followed a chance meeting at the grocery store parking lot, between me and an individual who works in my former office unit. Someone I had not seen or spoken with in almost two years. I was charged, fingerprinted, and treated like a criminal for an action that was totally fabricated and I believe initiated in a desperate attempt by my former colleagues to deter me from pursuing with adjudication and seeking justice for the manner in which I have been treated. I had to obtain the services of a lawyer, at my own expense, to represent me in court this coming June in order to contest these allegations. When the third-level grievance response was received on October 2007, I was further dismayed to learn that my grievances were denied. Believing at the time that I had 90 days to request referral to adjudication, and still feeling the added stress of being charged, I apparently misinterpreted the timeline respecting this process. However, the facts of my case, which span from 2003 to the current date, are still very much relevant and should be examined thoroughly in order for justice to prevail.*
>
> *With the support of my family, I am on the road to recovery, but this situation is almost unbearable. Therefore, since I have missed the 40-day timeline by only 8 days, I respectfully request that this issue of timeliness be dismissed and that this case be permitted to proceed.*

[19] The grievor testified. He confirmed that he received, on October 22, 2007, the employer's decision from the final level of the grievance process, dated October 4, 2007. He referred those grievances to adjudication on January 16, 2008.

[20] The grievor explained that he missed the 40 day time limit because he believed that he had 90 days to refer his grievances to adjudication.

[21] The grievor stated that, at the relevant time, he was no longer represented by his bargaining agent. He explained that he had dismissed his bargaining agent representative after having been informed that, against his wishes, his representative had placed his June 2005 grievance in abeyance for almost two years.

[22] The grievor also indicated that, in fall 2006, he had requested representation from his bargaining agent representatives in Ottawa but that they had refused to provide him with representation for his grievances. He also stated that he had contacted a lawyer, who was subsequently appointed as a judge, and that he could not afford to retain another lawyer. The grievor further stated that he inquired into help

from the Board but that he was informed that the Board did not provide advice to parties. He stated that he then sought advice from friends and family but that he was essentially left on his own to pursue his proceedings.

[23] The grievor indicated that he had read the *Act* and had misinterpreted the time limit prescribed to refer a grievance to adjudication. He explained his "misinterpretation" by the fact that, at the time, he was under extreme stress and was suffering from a high level of anxiety. He stated that his medical condition had been such that he was unable to work and was barely able to perform his day-to-day activities. He insisted that it took him enormous efforts of concentration to fill out the notice of referral to adjudication and to forward it to the Board.

[24] During cross-examination, the grievor acknowledged that, when he received the employer's final response to his grievances in October 2007, he did not recontact his bargaining agent to inquire about the time limit to refer his grievances to adjudication. When questioned by counsel for the employer about which portion of the *Act* led him to believe that he had 90 days to refer his grievances to adjudication, the grievor could not answer but insisted that the *Act* was not "all that" clear.

[25] Dr. Angela M. Penny, who has been the grievor's psychiatrist since August 2005, testified about the grievor's mental health during fall 2007 and early 2008. She indicated that the grievor was diagnosed with a chronic adjustment disorder with features of anxiety. Dr. Penny explained that the grievor suffered from several symptoms of depression, anxiety and changes in his behaviour and that these symptoms impacted the grievor's life in a number of spheres. She also explained that the grievor's anxiety resulted in insomnia, poor concentration and difficulty focussing. She added that the grievor looked depressed and discouraged and that he was very frustrated by his lack of control over how things were progressing. However, Dr. Penny confirmed that the grievor's condition did not involve any loss of reality and did not compromise his capacity to comprehend instructions or events.

[26] In cross-examination, Dr. Penny stated that she estimated that the grievor's global assessment function scale was between 40 and 45. He did not require hospitalization, he was able to function to a certain degree but he was not well enough to work and undertake academic duties.

III. Summary of the arguments

A. For the grievor

[27] Counsel for the grievor referred to section 61 of the *Regulations*, which provides the Chairperson the discretion to extend a time limit "… in the interest of fairness …" and submitted that I should exercise my discretion in this case. He referred me to *Jarry and Antonopoulos v. Treasury Board (Department of Justice)*, 2009 PSLRB 11, in which I reiterated that the following criteria apply when determining whether an extension of time should be granted:

. . .

> *a) clear, cogent and compelling reasons for the delay;*
>
> *b) the length of the delay;*
>
> *c) the due diligence of the applicant;*
>
> *d) balancing the injustice to the applicant against the prejudice to the respondent in granting the extension; and*
>
> *e) the chances of success of the grievance.*

. . .

[28] Counsel for the grievor argued that, in this case, all the criteria should balance in favour of an extension of time.

[29] Counsel for the grievor indicated that the grievor erroneously believed that he had 90 days to refer his grievances to adjudication and that he was diligent in referring his grievances to adjudication within the time limit that he thought was applicable. He insisted that the grievor's erroneous belief about the time limit should be considered in light of his medical condition at the relevant time. He invited me to consider that the grievor was not represented by his bargaining agent and that he was quite ill. He argued that the grievor's level of functioning may have led him to misread and misinterpret the *Act* and that a subjective element should be considered.

[30] Counsel for the grievor also contended that the delay was relatively short and that, therefore, he could not see how the employer could possibly be prejudiced by the delay. However, the grievor would suffer greatly from being deprived of pursuing his grievances.

[31] With respect to the chances of success of the grievances, counsel for the grievor referred to the arguments he had presented earlier with respect to the employer's objection to the grievances' adjudicability. I will summarize them for the purpose of this factor. The grievor argued that the matters raised in both grievances fall under paragraph 209(1)(*b*) of the *Act*, which reads as follows:

> ***209.*** *(1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> . . .
>
> *(*b*) a disciplinary action resulting in termination, demotion, suspension or financial penalty;*

[32] Insisting on the fact that the grievor was not represented by his bargaining agent when he wrote his grievances, counsel for the grievor recognized that the grievances could have benefited from better wording but submitted that they should be given a broad interpretation.

[33] With respect to the June 2005 grievance (566-02-1741), counsel for the grievor contended that, although the grievance does not directly refer to a demotion, the grievor was imposed a *de facto* demotion when the employer reassigned him. On that point, counsel for the grievor submitted that the grievor was reassigned to a position that involved almost no duties and that the few duties he had to perform required skills that were well beneath his level of expertise. Counsel for the grievor also contended that the employer had a duty to accommodate the grievor, given that the employer believed that the grievor was suffering from a mental illness that made him difficult to deal with, adding that the employer's failure to accommodate the grievor amounted to a *de facto* demotion. Counsel for the grievor referred me to *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27 with respect to the employer's obligation to accommodate employees on the basis of a perceived handicap. Replying to the employer's argument that the allegations with respect to the duty to accommodate should have been the subject of a grievance based on the no-discrimination clause of the collective agreement, counsel for the grievor submitted that the duty to accommodate originates from common law and human rights case law and not from the collective agreement.

[34] With respect to the November 2006 grievance (566-02-1742), the grievor argued that he believed that, by grieving the contents of the investigation reports, he was grieving all the employer's subsequent decisions based on those reports. Counsel for the grievor argued that the grievance challenging the investigation reports should be given a broad interpretation and that it should capture the employer's decision to suspend the grievor in February 2007, adding that a suspension is clearly adjudicable under section 209 of the *Act.*

B. <u>For the employer</u>

[35] Counsel for the employer submitted that the criteria applicable for determining whether an extension of time should be granted have not been met in this case. With respect to the first criterion, the employer argued that the grievor did not provide clear, cogent and compelling reasons for not respecting the 40 day time limit set by the *Regulations*. The employer argued that the grievor's medical condition between October 2007 and January 2008 was not so severe that it rendered him unable to refer his grievances to adjudication in a timely manner. Counsel for the employer insisted on the fact that, despite his anxiety, the grievor was able to refer his grievances to adjudication within the time limit that he believed applied.

[36] The employer also referred to Dr. Penny's opinion that the grievor's condition affected his concentration but not his ability to comprehend. Counsel for the employer also insisted on considering the grievor's inability to identify the section of the *Act* that misled him into thinking that he had 90 days to refer his grievances to adjudication. He added that it is unreasonable to conclude that the grievor could have misinterpreted the *Regulations* in believing that the time limit was 90 days instead of 40 days, given that section 90 of the *Regulations* is very clear and does not contain any 90-day time limit. The employer argued that the grievor simply missed the time limit and did not provide clear, cogent and compelling reasons to explain the delay.

[37] With respect to the length of the delay, the employer submitted that a 43-day delay is fairly significant. He also suggested that the grievor had not been diligent. Since he is a unionized employee, he could have contacted his bargaining agent and inquired about the time limit, but he chose to do otherwise. On that point, counsel for the employer referred to *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, and particularly to paragraph 77, which reads in part as follows:

.

> *[77] . . . However, in a unionized environment, the expectation is that employees are responsible for being aware of their rights. This includes an expectation that employees will check whether the assertions by management are correct, either by consulting their bargaining agent or the collective agreement. . . .*

[38] The employer also argued that the grievances are not adjudicable and that, therefore, they have no chance of success. On that point, counsel for the employer submitted that section 209 of the *Act* sets out the Board's jurisdiction to deal with grievances and that the matters raised in these grievances, as they are worded, do not fall within the matters that can be referred to adjudication under section 209. The grievor's notices of reference to adjudication indicate that the grievances were referred under paragraph 209(1)(*b*), which refers to "a disciplinary action resulting in termination, demotion, suspension or financial penalty." The employer argued that the wording of the grievances does not suggest that the grievor had been disciplined nor does it suggest that he was either demoted or suspended.

[39] Counsel for the employer was opposed to the grievor's proposition that the June 2005 grievance should be interpreted as alleging that the employer imposed a *de facto* demotion on the grievor. First, the employer argued that the wording of the grievances does not suggest any demotion. It further contended that an issue about the duty to accommodate can be based on the no discrimination clause of the collective agreement, but that a grievance on that issue must be referred to adjudication under paragraph 209(1)(*a*) of the *Act* with the approval of the bargaining agent. In this case, the grievance was referred under paragraph 209(1)(*b*) without the participation or involvement of the grievor's bargaining agent.

[40] The employer was also opposed to the grievor's proposition that the November 2006 grievance challenging the investigation reports should capture the employer's decision to suspend him in February 2007. The employer argued that it would be unreasonable to interpret the grievance challenging the conclusions of the investigation reports in such a way that it captures all the employer's subsequent actions and decisions. The grievor was entitled to present a grievance against his 8-day suspension, but he did not and cannot challenge it through a grievance filed before the suspension was imposed.

[41] Counsel for the employer also insisted that the grievor's propositions on how his grievances should be construed were made for the first time at the hearing and that they had not been raised during the grievance process. The employer suggested that the grievor's propositions amount to amending the grievances in a substantive way, which contravenes the principles clearly set out by the Federal Court of Appeal in *Burchill v. Canada (Attorney General)*, [1981] 1 F.C. 109 (C.A.) and in *Shneidman v. Canada (Customs and Revenue Agency)*, 2007 FCA 192.

IV. Reasons

[42] Subsection 90(1) of the *Regulations* clearly sets out the time limit for referring a grievance to adjudication. It reads as follows:

> ***90.*** *(1) Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.*

[43] In this case, it is undisputed that the grievor missed the 40 day time limit by 43 days.

[44] For its part, paragraph 61(*b*) of the *Regulations* provides that the Chairperson has the discretionary power to extend the time limits for presenting a grievance at any level of the grievance process or for referring a grievance to adjudication "in the interest of fairness…." I indicated in *Jarry and Antapoulos* that the criteria developed by the former Public Service Staff Relations Board in applying the provisions of the former *P.S.S.R.B Regulations and Rules of* procedure, 1993 (SOR/93-348) with respect to the extension of time limits apply when interpreting paragraph 61(*b*) of the *Regulations* adopted under the *Act*. The factors to be considered are the following:

a) clear, cogent and compelling reasons for the delay;

b) the length of the delay;

c) the due diligence of the applicant;

d) balancing the injustice to the applicant against the prejudice to the respondent in granting the extension; and

e) the chances of success of the grievance.

[45] In *Jarry and Antapoulos*, I also referred to the following excerpt from *Gill v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 81, about the weight to be given to each of the criteria:

. . .

> ***51*** *These criteria are not always given equal importance. The facts of a given case will dictate how they are applied and how they are weighted relative to each other. Each criterion is examined and weighed based on the factual context of the case under review. In some instances, some criteria may not be relevant or the weight may go to only one or two of them.*

. . .

[46] Before applying those criteria to the facts of this case, I wish to make the following general comments. In principle, time limits set by the *Act* and the *Regulations* are mandatory and should be respected by all parties. Having relatively short time limits is consistent with the principles that labour relations disputes should be resolved in a timely manner and that parties should be entitled to expect that an issue has come to an end when a prescribed time limit has elapsed. Time limits are not elastic, and extending them should remain the exception and should occur only after the decision maker has made a cautious and rigorous assessment of the circumstances.

[47] I will now apply the applicable criteria to this case.

[48] There is no doubt that, at the relevant time, the grievor suffered from a medical condition that involved symptoms of high anxiety and that affected his capacity to focus, concentrate and function normally. However, I do not consider that the evidence presented has established that the grievor's condition was severe enough to prevent him from understanding that he was bound by a time limit to refer his grievance to adjudication or from understanding the provisions of the *Regulations* setting time limits. Dr. Penner stated that, despite the grievor's level of anxiety, he did not suffer any loss of reality. She also indicated that the grievor's medical condition did not affect his capacity to comprehend instructions. Therefore, nothing leads me to conclude that the grievor was unable to read and comprehend the provisions of the *Regulations* with respect to time limits.

[49] Furthermore, the content of the grievor's application for an extension of time filed March 4, 2008, reveals that, during that period, the grievor's thoughts were well organized and that he understood that there was a time limit and that he had not respected it. That same letter also illustrates that the grievor was able to retain legal services with respect to the criminal charges. I also note that, during his testimony, the grievor was unable to point out which sections of the *Regulations* led him to erroneously interpret that he had 90 days to refer his grievances to adjudication or how he could otherwise have been misled, given that the *Regulations* do not provide any 90-day time limit.

[50] Although I have sympathy for the grievor, I do not consider that his medical condition provides a valid explanation for his erroneous belief that he had 90 days to refer his grievance to adjudication. Therefore, I do not consider that the grievor presented clear, cogent and compelling reasons to explain his delay in referring his grievances to adjudication.

[51] Neither do I consider that the grievor acted with due diligence. The grievor could have contacted his bargaining agent to inquire about the time limits, but he decided against it for personal reasons. I understand that the grievor was no longer represented by his bargaining agent in his grievance proceedings, but in my view, that did not prevent him from contacting his bargaining agent to inquire about time limits. I consider that an employee engaging in proceedings is responsible for inquiring and finding out about the rules that govern those proceedings and that one cannot put forward his or her ignorance of the applicable rules or his or her decision not to seek professional advice to justify an extension of time.

[52] Given my conclusion on the first two criteria, I do not consider that the length of the delay, which I do not consider to be insignificant, and the balance between the prejudice to the employer and the injustice to the grievor should be determinant.

[53] The last factor to be considered refers to the grievances' chances of success. In this case, I consider that the grievances do not fall within the parameters of paragraph 209(1)(*b*) of the *Act* and that, therefore, they do not have any chance of success.

[54] The special characteristic of the federal labour relations regime is that Parliament made a clear distinction between matters that can be challenged through a grievance (section 208 of the *Act*) and the grievances that can validly be referred to

adjudication. Section 209 clearly sets out the matters that can be referred to adjudication. The grievor based his grievances on paragraph 209(1)(*b*), which refers to "a disciplinary action resulting in termination, demotion, suspension or financial penalty." To be encompassed by paragraph 209(1)(*b*), the employer's decision at issue must have been disciplinary in nature and must have resulted in either a termination, a demotion or a penalty.

[55] In his grievance challenging the employer's decision to reassign him, the grievor did not even allege that he had been subject to any discipline from the employer. That is sufficient to conclude that the matter at issue does not fall under paragraph 209(1)(*b*) of the *Act*. However, I will add that I disagree with the grievor's proposition that his grievance should be construed as challenging a *de facto* demotion. Without pronouncing myself on the merit of the argument about the duty to accommodate, I consider that the grievor's proposition is not supported by the wording of the grievance and that accepting the proposition would amount to amending the grievance in a substantive manner that is not permitted under *Burchill* and *Shneidman*.

[56] I also consider that the grievance challenging the investigation process and the investigation reports does not fall within the parameters of paragraph 209(1)(*b*) of the *Act*. First, when the grievor filed his grievance in November 2006, the employer had not yet decided to discipline him, and the wording of the grievance does not suggest any disciplinary action from the employer. Second, I disagree with the grievor's proposition that his grievance should capture the employer's subsequent decision to suspend him because it was based on the conclusions of the investigation reports. In my view, the employer's decision to suspend the grievor was a subsequent event distinct from the investigation process and reports and it had to be grieved on its own. The letter of suspension clearly stated that the grievor was entitled to grieve the decision. Finally, I consider that the grievor's proposition amounts to amending the grievance in a substantive manner not permitted by *Burchill* and *Shneidman*.

[57] The application of the criteria for an extension of time to the facts of this case do not convince me that I should use my discretion to grant the requested extension of time. The facts of this case differ from those in *Jarry and Antapoulos.* In that case, the delay in presenting the grievances at the final level of the grievance process was due to an administrative error made by the grievors' counsel who had been mandated to act on behalf of the grievors. I concluded that the grievors should not be penalized by

their counsel's error. In *Jarry and Antapoulos*, the grievors had also been late in sending documentation to their counsel, but I concluded, based on the facts, that the grievors were misled by their counsel with respect to the applicable time limit and that it was reasonable for them to have relied on the information provided by their counsel. As I mentioned earlier, in this case the grievor did not consult his bargaining agent about the time limits.

[58] Considering that I am not granting the grievor's application for an extension of time, there is no need for me to rule on the employer's objection about the adjudicability of the grievances. However, even if I had granted the application for an extension of time, I would have concluded, for the reasons outlined in paragraphs 53 to 56 of this decision, that the grievances were not adjudicable because they do not fall within the parameters of section 209 of the *Act*.

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

(The Order appears on the next page)

V. Order

[60] The application for an extension of time is denied.

[61] The grievances are dismissed.

July 24, 2009.

Marie-Josée Bédard,
Vice-Chairperson