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File: 568-02-219

Citation: 2010 PSLRB 106



*Public Service
Labour Relations Act*

Before the Chairperson

BETWEEN

PATRICK J. MONNELLY

Applicant

and

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

Respondent

Indexed as

Monnelly 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: Himself

For the Respondent: Cécile La Bissionnière, Treasury Board Secretariat

Decided on the basis of written submissions,
filed July 29 and August 19 and 29, 2010.

REASONS FOR DECISION

Application before the Chairperson

[1] On July 28, 2010, Patrick Monnelly filed an application for an extension of time to file a grievance at a higher level of the grievance procedure that he states was first heard on January 8, 1991.

[2] Until his release from the public service, Mr. Monnelly was a science procurement officer classified at the PG-04 level for the Department of Supply and Services, as it was then known. By letter dated July 10, 1990, he was informed that a recommendation was to be made to release him from his position under section 31 of the *Public Service Employment Act (PSEA)*, R.S.C., 1985, c. P-33. The appeal against his release for incompetence was heard, and on January 22, 1991, the Appeal Board Chairperson dismissed his appeal. Mr. Monnelly was represented by the Public Service Alliance of Canada (PSAC) at that hearing.

[3] On October 2, 1996, the PSAC provided Mr. Monnelly with a legal opinion advising him that a legal challenge to the decision of the Appeal Board Chairperson had to be pursued by way of an application for judicial review before the Federal Court, pursuant to section 18 of the *Federal Court Act (FCA)* within 30 days following the date of the decision to be appealed. The time to present this application expired in late February 1991. The PSAC declined to further represent Mr. Monnelly.

[4] Thereafter, Mr. Monnelly wrote to the Clerk of the Privy Council in 2003, and to his Member of Parliament in 2006, seeking their assistance in pursuing the review of the decision of the Appeal Board Chairperson. Both politely declined any assistance, stating that a review had become untimely. In his application, Mr. Monnelly states that he approached "...just about every Department and Agency Head in the System, all to no avail."

[5] On August 19, 2010, the Treasury Board, as the employer, objected to the application. First, it states that Mr. Monnelly never filed a grievance with respect to his release for incompetence in 1990. Second, the processing of an application at this time would cause it serious prejudice, as departmental records no longer exist. Third, the stakeholders mentioned in the application are no longer employed at what is now the Department of Public Works and Government Services. Fourth, the employer argues that Mr. Monnelly is trying to challenge a release that has already been heard and dismissed. Fifth, the employer states that Mr. Monnelly has already been informed by

the PSAC that a legal challenge to the decision of the Appeal Board Chairperson is to the Federal Court and that he did not pursue that avenue. The employer requests that the application for an extension of time be dismissed without a hearing, regardless of its intent.

[6] Mr. Monnelly replied to the employer's objection as follows:

...

Having use the "written submission" route for the past fifteen years with an utter lack of success, I can not agree to proceed in this regard, as suggested by Ms. La Bissonnière, in her above referenced letter.

Indeed, I am convinced that this festering problem can only be resolved with the involvement of an independent "third party".

...

[Sic throughout]

Reasons

[7] Pursuant to section 45 of the *Public Service Labour Relations Act (PSLRA)*, 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* to hear and decide any matter relating to this application for an extension of time.

[8] After reviewing the application and the employer's objection, I decided that, in accordance with section 41 of the *PSLRA*, the application and the employer's objection could be dealt without holding an oral hearing.

[9] At the time Mr. Monnelly was released, subsection 91(2) of the *Public Service Staff Relations Act (PSSRA)*, R.S.C., 1985, c. P-35, provided that an employee may not present a grievance in respect of which an administrative procedure for redress is provided in an Act of Parliament.

[10] When Mr. Monnelly challenged his release under section 31 of the *PSEA*, the only administrative procedure for redress was an appeal to the Public Service Commission Appeal Board. A grievance under the *PSSRA* was not available as a recourse to an employee released under section 31 of the *PSEA*.

[11] As Mr. Monnelly never filed a grievance, there is no legal basis for me to consider extending the time to file a grievance to a subsequent level of the grievance procedure. The only recourse to challenge the decision of the Appeal Board Chairperson was by way of an application for judicial review before the Federal Court, pursuant to section 18 of the *FCA* within 30 days following the date of the decision. The time to present this application expired in February 1991, and therefore, any right of review is now extinguished.

[12] The *PSSRA* did not provide for any other right of redress.

[13] Since I am without jurisdiction to further consider this application, the question of timeliness is moot.

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

(The Order appears on the next page)

Order

[15] I declare that I am without jurisdiction to consider this application.

[16] The application is dismissed.

October 8, 2010.

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