

Date: 20100115

File: 568-35-202

Citation: 2010 PSLRB 8



*Public Service
Labour Relations Act*

Before the Chairperson

BETWEEN

ALITA PERRY

Applicant

and

CANADIAN INSTITUTES OF HEALTH RESEARCH

Respondent

Indexed as

Perry v. Canadian Institutes of Health Research

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: [Melynda Layton, counsel](#)

For the Respondent: [Karl Chemsy, counsel](#)

Decided on the basis of written submissions
filed November 12 and 23 and December 14, 2009.

REASONS FOR DECISION

I. Application before the Chairperson

[1] This is an extension of time application for a referral to adjudication that did not arrive at the Public Service Labour Relations Board (PSLRB) within the time frame for a referral but that was provided to the Canadian Institutes of Health Research (“the respondent”) within the appropriate time frame.

[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* to hear and decide any matter relating to extensions of time.

[3] Because no material facts were in dispute, I determined that the matter could be dealt with by written submissions. The submissions of the parties are on file with the PSLRB. I have summarized those submissions later in this decision.

II. Background

[4] Alita Perry’s (“the applicant”) employment was terminated for cause on April 14, 2009. She grieved and received the final-level grievance response on June 18, 2009. Counsel for Ms. Perry alleges that the grievance was referred to adjudication on June 22, 2009, by mail to the PSLRB. The PSLRB has no record of receiving this referral to adjudication.

[5] On that same date, counsel for the applicant faxed a copy of the notice of reference to adjudication (Form 21) to the Director of Human Resources of the respondent and to John Lukaszczyk, a labour relations advisor with the respondent. As part of this application, counsel for the applicant filed a copy of the cover letter sent to the respondent as well as the confirmation of receipt of the fax, dated June 22, 2009.

[6] After June 22, 2009, counsel for the applicant and Mr. Lukaszczyk exchanged emails concerning the referral to adjudication, which were also filed as part of this application. In an email sent on July 7, 2009, Mr. Lukaszczyk acknowledged that the grievance had been referred to adjudication. In an earlier email (dated June 23, 2009) to Francis Savage, Mr. Lukaszczyk wrote that the grievance had been referred to adjudication.

[7] Mr. Lukaszczyk emailed the PSLRB on July 14, 2009 asking if the PSLRB had received the reference to adjudication. He was advised by telephone that it had not yet been received.

[8] On October 26, 2009, counsel for the applicant contacted the PSLRB to inquire about the status of a grievance referred to adjudication. She advised the PSLRB that the referral to adjudication had been made in June 2009 by regular mail. The PSLRB had no record of receiving the referral to adjudication. Counsel for the applicant had no proof that it had been sent to the PSLRB because she had sent it by regular mail.

[9] She faxed another referral to adjudication on October 26, 2009, followed by a hard copy on October 28, 2009.

[10] Counsel for the respondent emailed the PSLRB on November 12, 2009, objecting to the timeliness of the reference to adjudication and requesting that the grievance be dismissed without a hearing.

III. Summary of the arguments

A. For the applicant

[11] The applicant submits that the grievance was referred to adjudication within the prescribed time limit. The respondent was aware that the grievance had been referred to adjudication. Although there was a defect in the process, the respondent was always aware that a referral to adjudication had been made. The applicant should not be prejudiced by her administrative error.

[12] The respondent was aware by July 14, 2009 that the referral to adjudication had not been received by the PSLRB, and it would have been reasonable for the respondent to provide this information to the applicant or her counsel.

[13] In the alternative, an application for an extension of time should be granted. The following factors have been considered in the past by the PSLRB in determining whether to grant an extension of time:

- Are there clear, cogent and compelling reasons for the delay?
- What is the length of the delay?
- What is the balance of injustice to the employee against the prejudice to the respondent in granting the extension?

- What is the chance of success of the grievance, or is the grievance devoid of merit?

[14] The amount of the delay is not extraordinary. A delay of two months is not substantial. Furthermore, the fact that the referral to adjudication was made by the applicant and acknowledged by the respondent lends further credence to the argument that the delay was not substantial.

[15] The prejudice to the applicant would be significant were an extension of time not granted. The applicant was terminated after 15 years of employment. The grievance is not without merit.

[16] The PSLRB has the power to relieve against technical defects and should exercise that power in the circumstances of this case. I was referred to *Enns v. Treasury Board (Correctional Service of Canada)*, 2004 PSSRB 171, and *Trenholm v. Staff of the Non-Public Funds*, 2005 PSLRB 65.

[17] The respondent has provided no information demonstrating that it has suffered any prejudice by the delay. I was referred to *Coram v. Treasury Board (Transport Canada)*, PSSRB File Nos. 149-02-156 and 166-02-26146 (19960819).

B. For the respondent

[18] In a correspondence with the PSLRB dated December 14, 2009, the respondent made the following submissions:

...

After reviewing the Grievor's application and although there is no evidence that the notice of reference to adjudication was sent to the Board in a timely manner, the Employer will not provide any position with respect to this application.

Therefore, the employer will leave the application of section 61 of the Public Service Labour Relations Board Regulations to the discretion of the Chairperson of the Board.

...

IV. Reasons

[19] It will remain a mystery as to why the initial referral to adjudication never arrived at the PSLRB. This highlights the importance of faxing originating documents

(followed by originals) in order to have some record of the date that the referral was submitted or of using some other method of confirming the sending of an originating document.

[20] It is clear that the referral to adjudication was not received by the PSLRB in a timely manner. The referral to adjudication cannot be considered timely without proof that it was received by the PSLRB. As a result, I will need to consider this application for an extension of time, made by the applicant.

[21] In the absence of any submissions by the respondent, it is impossible to determine its position on the application for an extension of time. The respondent does not contest any of the submissions of the applicant. The respondent notes that it was aware of the referral to adjudication and that it was also aware that the PSLRB had not received it.

[22] The delay in the referral to adjudication was not lengthy, the respondent had timely notice that a referral to adjudication was being made and the respondent has not demonstrated that it would suffer any prejudice by the granting of the extension of time. Accordingly, an extension of time to refer the grievance to adjudication is warranted.

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

(The Order appears on the next page)

V. Order

[24] Application for extension of time granted.

January 15, 2010.

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