Date: 20120705

File: 566-02-6637

Citation: 2012 PSLRB 74

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

MAY LING (LEE) KRACK

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Krack v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Kate Rogers, adjudicator

For the Grievor: Harinder Mahil, Professional Institute of the Public Service of Canada

For the Employer: Patricia Phee, Treasury Board

Decided on the basis of written submissions
filed March 20 and 26 and April 17, 2012.

Individual grievance referred to adjudication

[1] The grievor, May Ling (Lee) Krack, is employed as a registered nurse at the Pacific Institution Regional Health Treatment Centre of the Correctional Service of Canada (CSC or the "employer") in Abbotsford, B.C. She filed a grievance on May 20, 2010, alleging that she was off work from March 12, 2010 to May 12, 2010 due to a medical condition caused by the Acting Chief of Health Services. That grievance was denied at the final level of the grievance process on October 5, 2010. On February 17, 2012, the grievance was referred to adjudication.

[2] On March 20, 2012, the employer filed an objection to the jurisdiction of an adjudicator of the Public Service Labour Relations Board to hear this grievance on the grounds that the referral to adjudication was untimely.

Summary of the arguments

[3] The employer argued that, under the provisions of section 90 of the *Public Service Labour Relations Board Regulations* ("the *Regulations*"), since the final-level reply to the grievance was issued on October 5, 2010, the deadline for a referral to adjudication was November 15, 2010. However, the grievance was not referred to adjudication until February 17, 2012 and was, therefore, clearly out of time.

[4] The grievor stated that she did not receive a copy of the final-level reply until January 6, 2012. She also argued that, on January 23, 2012, in response to an enquiry on her behalf by her union representative about the grievance, the employer invited her to refer the grievance to adjudication and raised no objection to the timeliness of the referral.

[5] In response, the employer contended that the grievance was one of a number of grievances filed by a group of employees. Even though the grievor did not receive her copy of the response in 2010, her co-workers received theirs, and she would have been aware of that. The grievance reply was also copied to her union representative. Furthermore, the grievor received a letter dated November 8, 2010 from the employer that referenced the final-level reply to her grievance and asked if she wished to pursue the matter as a formal harassment complaint. The grievor responded to that letter on November 15, 2010, indicating that she wanted the matter to be treated as a formal harassment complaint.

[6] The employer argued that, even if the grievor did not receive a copy of the reply to the grievance in time, subsection 90(2) of the *Regulations* provides as follows:

> **90.**(*2*) *If no decision at the final level of the applicable grievance process was received, a grievance may be referred to adjudication no later than 40 days after the expiry of the period within which the decision was required under this Part or, if there is another period set out in a collective agreement, under the collective agreement.*

[7] The employer cited *Schenkman v. Treasury Board (Public Works and Government Services Canada),* 2004 PSSRB 1, for the proposition that employees in a unionized environment are responsible for being aware of their rights.

[8] Finally, in rebuttal, the grievor contended that the employer copied the wrong union representative. She also argued that it was standard practice for the employer to extend the deadline to grievances, pending union representation.

Reasons

[9] The grievor is a registered nurse working at the Pacific Institution Regional Health Treatment Centre of the Correctional Service of Canada, in Abbotsford, B.C. On May 20, 2010, she filed a grievance alleging that she was off work as a result of a medical condition caused by her supervisor. On February 17, 2012, this grievance was referred to adjudication. The employer objected to the referral to adjudication on the grounds that the final-level reply to the grievance was issued on October 5, 2010 and that, therefore, the grievance was out of time. However, the grievor argued that she received her copy of the final-level grievance response only on January 6, 2012, when she asked the employer for it. Given this fact, she argued that the referral fell within the prescribed time limits.

[10] There is no dispute that the employer issued the final-level response to this grievance on October 5, 2010. Further, it is clear that, although the grievor might not have received a copy of the final-level reply, she received a letter from the employer dated November 8, 2010 that referred to the final-level response that was issued, and she responded to that letter on November 15, 2010 by pursuing a harassment complaint. Given this fact, I find that the grievor was aware that the final-level response to the grievance had been issued at least by November 8, 2011. Even if that

were not the case, subsection 90(2) of the *Regulations* makes it clear that the grievor could have referred her grievance to adjudication within the time limits set out, even in the absence of a final-level response. She did not. She cannot now attempt to revive her right to refer her grievance to adjudication by alleging that she received the employer's response only on January 6, 2012.

[11] I do not accept the grievor's contention that the fact that the final-level grievance response was sent to the wrong union representative changed the outcome in any way. The grievor must assume responsibility for the timely referral of her grievance and the fact that she pursued a harassment complaint following the final level response to the grievance demonstrates that she was able to act in her own interest. Nor do I find that the employer waived its right to object to jurisdiction based on timeliness as the grievor suggested. The email in question was not intended to be a substantive response to the grievance but was a response to the grievor's request to discuss the corrective action sought in the grievance following a decision on her harassment complaint.

[12] In my view, this referral to adjudication is untimely and I am therefore without jurisdiction to hear it.

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

(The Order appears on the next page)

Order

[14] I order the file to be closed.

July 5, 2012.

Kate Rogers,
adjudicator