

Date: 20120621

File: 566-02-5233

Citation: 2012 PSLRB 69



*Public Service  
Labour Relations Act*

Before an adjudicator

---

BETWEEN

**RÉJEAN LEGAULT**

Grievor

and

**DEPUTY HEAD  
(Statistics Canada)**

Respondent

Indexed as  
*Legault v. Deputy Head (Statistics Canada)*

In the matter of an individual grievance referred to adjudication

**REASONS FOR DECISION**

***Before:*** Stephan J. Bertrand, adjudicator

***For the Grievor:*** Himself

***For the Respondent:*** Léa Bou Karam

---

Heard at Montreal, Quebec,  
May 3 and 4, 2012.  
(PSLRB Translation)

**I. Individual grievance referred to adjudication**

[1] On July 30, 2010, Statistics Canada (“the respondent”) terminated the employment of Réjean Legault (“the grievor”) under paragraph 12(1)(e) of the *Financial Administration Act*, R.S.C. 1985, c. F-11, for medical incapacity. Subsection 12(1) provides for the following:

*12. (1) Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head:*

...

*(e) provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct . . . .*

...

Paragraphs 11.1(1)(f) and (g) read as follows:

*11.1 (1) In the exercise of its human resources management responsibilities under paragraph 7(1)(e), the Treasury Board may:*

...

*(f) establish policies or issue directives respecting the exercise of the powers granted by this Act to deputy heads in the core public administration and the reporting by those deputy heads in respect of the exercise of those powers;*

*(g) establish policies or issue directives respecting:*

*(i) the manner in which deputy heads in the core public administration may deal with grievances under the Public Service Labour Relations Act to which they are a party, and the manner in which they may deal with them if the grievances are referred to adjudication under subsection 209(1) of that Act, and*

*(ii) the reporting by those deputy heads in respect of those grievances . . .*

...

Finally, paragraph 7(1)(e) states the following:

*7. (1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to:*

*. . .*

*(e) human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it . . . .*

[2] On August 24, 2010, the grievor filed a grievance challenging the termination of his employment. In it, as a corrective measure, he requested his “[translation] reinstatement in a position and return to work at an unspecified future date.” The respondent dismissed the grievance at the final level of the grievance process on December 24, 2010. The grievor referred his grievance to adjudication on April 6, 2011.

[3] On May 5, 2011, the respondent raised an objection to the referral of the grievance to adjudication on the grounds that it was not referred within the prescribed time. The parties were summoned to a hearing on May 3 and 4, 2012 to address the preliminary objection.

## **II. Hearing**

[4] On January 30, 2012, a registry officer of the Public Service Labour Relations Board (“the registry officer”) asked the parties to confirm their availability for a hearing in Montreal, Quebec, on May 3 and 4, 2012, which was to deal exclusively with the objection to the time taken to refer the grievance to adjudication. The grievor confirmed his availability in an email dated February 11, 2012.

[5] On February 15, 2012, the registry officer informed the parties that the hearing would be held on May 3 and 4, 2012 and that those dates were considered “final.”

[6] On March 27, 2012, the registry officer sent the parties a notice of hearing indicating the hearing dates and location. The hearing notice clearly indicated that, if either party failed to appear at the hearing, the adjudicator could rule on the issue based on the submitted evidence and representations, without further notice. The grievance file indicates that the grievor received the notice of hearing on March 28, 2012.

[7] The grievor did not attend the hearing on May 3, 2012, and gave no prior notice. However, the respondent attended. I suspended the hearing until the following day to allow the registry officer to contact the grievor and seek an explanation.

[8] On May 3, 2012, in the afternoon, during a phone conversation with the registry officer, the grievor indicated that he did not attend the hearing because he did not feel sufficiently prepared. The registry officer asked him if he wished to postpone the hearing. He replied in the negative and added that he did not plan to attend the hearing when it resumed on the following day.

[9] The grievor did not attend the hearing when it resumed on May 4, 2012, despite being notified of it. He initially confirmed his availability for that day, and at no time did he request a postponement of the hearing. Given the grievor's decision to not take part in the adjudication, I proceeded in his absence and invited the respondent to present the preliminary objection about the time taken to refer the grievance to adjudication.

#### **A. Summary of the evidence**

[10] Dominic Farand testified for the respondent. He indicated that he had been a labour relations advisor for the respondent from March 2010 to March 2012. Mr. Farand confirmed that he was familiar with the grievor's file and that he drafted the decision at the final level of the grievance process, which was signed by Chief Statistician of Canada Wayne R. Smith and was sent by registered mail by Mr. Farand on December 24, 2010.

[11] According to the decision made at the final level of the grievance process, the respondent offered the grievor many opportunities to choose options about his employment status, beginning in 2007, but the grievor refused to choose any of the proposed options. Note that, according to Mr. Farand's testimony, the grievor was on leave without pay due to illness beginning in November 2002 because he had exhausted the balance of his sick leave credits. The grievor was absent and never returned to work from 2001 until July 30, 2010, the date on which the respondent terminated his employment due to medical incapacity.

[12] Mr. Farand indicated that the grievor applied for medical retirement in 2004, which Health Canada, his attending physician and the Régie des rentes du Québec all approved. However, the grievor ultimately changed his mind and withdrew his

application, which Mr. Farand stated partly explains the extended period of leave without pay.

[13] According to Mr. Farand, the grievor's numerous refusals, his strange behaviour and his unbelievable allegations made communicating with him and the possibility of a resolution of his employment status very difficult, if not impossible.

[14] The grievor received the decision from the final level of the grievance process no later than December 31, 2010, according to Mr. Farand, because the grievor sent him an email on the day in question asking about the merits of that decision. Although he indicated his intention to challenge the decision made at the final level of the grievance process in his December 31, 2010 email, the grievor did not file his notice of reference to adjudication until April 6, 2011.

### **B. Summary of the arguments**

[15] The respondent maintained that, under subsection 90(1) of the *Public Service Labour Relations Board Regulations* ("the *Regulations*"), the grievor had 40 days to refer his grievance to adjudication from the date on which he received the decision made at the final level of the grievance process. That subsection provides 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.*

*(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.*

According to the December 31, 2010 email, the grievor had received the decision from the final level of the grievance process. However, he did not refer his grievance to adjudication until April 6, 2011, which far exceeded the prescribed period.

[16] The respondent also maintained that no application for an extension of time for the referral to adjudication was submitted under section 61 of the *Regulations*, which provides as follows:

*61. Despite anything in this Part, the time prescribed by this Part or provided for in a grievance procedure contained in a collective agreement for the doing of any act, the presentation of a grievance at any level of the grievance process, the referral of a grievance to adjudication or the providing or filing of any notice, reply or document may be extended, either before or after the expiry of that time,*

*(a) by agreement between the parties; or*

*(b) in the interest of fairness, on the application of a party, by the Chairperson.*

[17] The respondent submitted that dismissing the grievor's referral of the grievance to adjudication was justified because he referred it to adjudication outside the prescribed time, did not apply for an extension of time, did not request a postponement of the hearing dealing with the delay and did not provide a reason for his absence from the hearing.

### **III. Reasons**

[18] The referral of the grievor's grievance to adjudication was clearly untimely. The grievor received the decision made at the final level of the grievance process on December 31, 2010, and, under subsection 90(1) of the *Regulations*, had 40 days after that date to refer his grievance to adjudication, which he did not do. The grievor referred his grievance to adjudication on April 6, 2011, in other words 96 days after receiving the final-level decision, which was more than twice the prescribed time.

[19] The respondent's preliminary objection that the grievance was not referred within the prescribed time was raised on May 5, 2011, within the 30 days provided under paragraph 95(1)(b) of the *Regulations*, which reads 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; or*

*(b) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the reference to adjudication has not been met.*

[20] The parties were summoned to a hearing on May 3 and 4, 2012, in Montreal, for the sole purpose of addressing the preliminary objection to the timeliness of the referral to adjudication of the grievance. The grievor confirmed his availability in an email dated February 11, 2012 and received a notice of hearing confirming the time and location of the hearing on March 28, 2012. When the registry officer contacted him on May 3, 2012, the grievor did not allege that he did not receive the notice of hearing, but instead stated that he did not feel prepared to proceed. The grievor did not request a postponement of the hearing; nor did he attend the hearing when it resumed on the following day.

[21] Since the time limit for referring this grievance to adjudication was not respected by the grievor and was not extended by an agreement between the parties or by an order of the Chairperson of the Public Service Labour Relations Board, which could have been done at the grievor's request under section 61 of the *Regulations*, I can conclude only that the grievance was not validly referred to adjudication.

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

*(The Order appears on the next page)*

**IV. Order**

[23] The preliminary objection to the timeliness of the reference to adjudication of the grievance is allowed.

[24] I declare that the grievance was not validly referred to adjudication and order the file closed.

June 21, 2012.

PSLRB Translation

**Stephan J. Bertrand,  
adjudicator**