Date: 20130304

Files: 568-02-242 and 263
XR: 566-02-5794 and 6134

Citation: 2013 PSLRB 20

Public Service Labour Relations Act

Before the Chairperson

BETWEEN

KEITH SONMOR AND JEROME SLATER

Applicants

and

TREASURY BOARD
(Correctional Service of Canada)

Respondent

Indexed as
Sonmor and Slater v. Treasury Board (Correctional Service of Canada)

In the matter of applications for extensions of time referred to in paragraph 61(*b*) of the *Public Service Labour Relations Board Regulations*

REASONS FOR DECISION

Before: Renaud Paquet, Vice-Chairperson

For the Applicants: Marie-Pier Dupuis-Langis, Sheryl Ferguson and Andrea Tait, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Eric Daoust, Vanessa Buchanan, Ken Graham and Maryse Bernier, Treasury Board Secretariat

Decided on the basis of written submissions
filed September 28, October 7 and 18, November 16, December 1 and 29, 2011,
December 20, 2012, and January 28 and 29, 2013.

Applications before the Chairperson

[1] Keith Sonmor and Jerome Slater ("the applicants") are correctional officers working at either the Saskatchewan or the Joyceville penitentiary. In 2011, they each filed a grievance against the Correctional Service of Canada ("the respondent"). Their grievances were denied. Mr. Sonmor referred his grievance to adjudication on August 25, 2011, and Mr. Slater, on October 13, 2011. In each case, the respondent objected to the referral to adjudication on the basis that the applicant was late in referring his grievance to adjudication. The applicants admitted being late. They wrote to the Public Service Labour Relations Board ("the Board") and asked that the Board's Chairperson grant extensions of time for their grievances, pursuant to section 61 of the *Public Service Labour Relations Board Regulations* ("the *Regulations*"). The applicants are represented by their bargaining agent, the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the union" or "the bargaining agent"). The applicable collective agreement is the one signed by the Treasury Board and the union on June 26, 2006 for the Correctional Services Group bargaining unit ("the collective agreement").

[2] Pursuant to section 45 of the *Public Service Labour Relations Act* ("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 in this case.

[3] On March 28, 2011, Mr. Sonmor grieved that the respondent violated the collective agreement by not offering him an overtime shift that he should have been offered. The respondent denied the grievance at the first and second level of the grievance procedure. The union transmitted the grievance to the final level on May 7, 2011. The respondent did not respond to the grievance at the final level within the timeline specified in the collective agreement. On August 25, 2011, the union referred the grievance to adjudication. On September 2, 2011, the Board informed the respondent that the union had referred the grievance to adjudication. On September 28, 2011, the respondent objected to an adjudicator's jurisdiction to hear the grievance on the basis that it was not referred to adjudication within the prescribed time limit.

[4] On October 7, 2011, the union requested an extension of time on behalf of Mr. Sonmor for the referral of his grievance to adjudication. In its request, it wrote that "... the tardy referral was a result of a clerical error by a bargaining agent representative" and that "... Mr. Sonmor's rights should not be negatively affected by the bargaining agent's error."

[5] On March 11, 2011, Mr. Slater grieved the respondent's decision to not pay him acting pay for the days on which he was asked to act as a trainer. The respondent denied the grievance at the first and second level of the grievance procedure. The union transmitted the grievance to the final level on July 6, 2011. The respondent did not respond to the grievance at that level within the timeline specified in the collective agreement. On October 13, 2011, the union referred the grievance to adjudication. On October 27, 2011, the Board informed the respondent that the union had referred the grievance to adjudication. On November 16, 2011, the respondent objected to an adjudicator's jurisdiction to hear the grievance on the basis that it was not referred to adjudication within the prescribed time limit.

[6] On December 1, 2011, the union requested an extension of time on behalf of Mr. Slater for the referral of his grievance to adjudication. In its request, it wrote that "... the delay was a result of an oversight of the bargaining agent elected representative" and that "... Mr. Slater's rights should not be negatively affected by the bargaining agent's elected representative's error."

[7] On October 18 and December 29, 2011, the respondent opposed the requests for extensions of time. It stated that the applicants had not provided significant reasons for their failure to meet the mandatory time limit to refer their grievances to adjudication and that there were no clear cogent and compelling reasons for the delay. The respondent referred me to *Deputy Head (Public Health Agency of Canada) v. Sharaf*, 2009 PSLRB 115, and *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1.

Supplementary applicant's submissions

[8] I was appointed by the Chairperson to review these applications, along with other comparable applications emanating from the same union, all related to errors or omissions on the part of the union about respecting the time limit in the internal

grievance or the adjudication procedure. Considering that two decisions were issued in 2012 on behalf of the Chairperson of the Board on similar requests, I instructed the Board's registry to ask the union to make submissions as to how these applications for extension of time substantially differed from the two decisions rendered in 2012. Those decisions are *Kunkel v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 28, and *Callegaro v. Treasury Board (Correctional Service of Canada),* 2012 PSLRB 110.

[9] The following are extracts from the letter sent to the union, and copied to the respondent, on November 2, 2012, related to these two applications:

> . . .
>
> *A Vice-Chairperson has reviewed a list of applications for extension of times filed by the UCCO-SACC-CSN. These files contain the following information.*
>
> . . .
>
> - *In file 568-02-242, the grievor was a few weeks late in referring his grievance to adjudication. The bargaining agent wrote on October 7, 2011, that "the tardy referral was a result of a clerical error by the bargaining agent representative".*
>
> . . .
>
> - *In files 568-02-263, the grievor was a few weeks late in referring his grievance to adjudication. The bargaining agent wrote on December 1, 2011, that "the delay was a result of an oversight of the bargaining agent's elected representative".*
>
> . . .
>
> *In the past few months, the Board has ruled on request for extension of times resulting from errors or omissions by bargaining agent's representatives not to refer grievances to adjudication within the delays. In* Kunkel v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 28, Vice-Chairperson Gobeil rejected the application. She wrote:*
>
> > [21] Turning to the evidence, I find that even if, as argued by the applicant's representative the late referral was an oversight by the bargaining agent and that the applicant misunderstood the timeline to refer a grievance, these are, considering the facts of

> this case, unsatisfactory explanations for the delay that do not justify an extension of time. In the present case, mistaken assumptions cannot be the basis for extending timelines.
>
> [22] In my opinion, the fact that the *Act* speaks clearly to situations where the employer does not respond to a grievance makes the explanations of the bargaining agent and the applicant, when taken together, such that they do not, in this case, provide a cogent and compelling reason to extend the time limits. While it might do so in other cases where the bargaining agent's reason for inaction was reasonable and where the grievor involved was completely blameless for the error, this is not such a case. The applicant's bargaining agent is a sophisticated union which possesses years of experience in the representation of members of the CX bargaining unit, both under this *Act* and under its predecessor. Combined with the clear wording of the *Act* with respect to time limits and referring grievances to the next level in the event of a failure of the employer to respond within the time limits, the explanation offered by the bargaining agent is not cogent and compelling.

In Callegaro v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 110, Vice-Chairperson Paquet also rejected the application. He wrote:*

> [19] The applicant did not convince me that she had a clear, cogent and compelling reason to explain the 14-month delay referring her grievances to adjudication. In fact, the delay is entirely attributable to the union and to the fact that the applicant did not inquire into what was happening with her grievances. Had she been more diligent, she would have realized at some point that the grievances had not been referred to adjudication. The union's omission, negligence or mistake is not a cogent and compelling reason for extending the time. No jurisprudence was submitted to support such proposition. The applicant or her union were not prevented from referring the grievances to adjudication. They were simply negligent, and they did not do it within the legal time frame. In that respect, the applicant and her union cannot be considered as two separate entities as implied by the applicant's argument that she should not "pay" for her union's omissions.
>
> [20] If the delay is not justified by clear, cogent and compelling reasons, the other factors are of little relevance. Otherwise, as I wrote in Lagacé, "[w]hat purpose would the time limits agreed to by the

> parties to a collective agreement serve if the Board's Chairperson could extend them based on an application not strongly justified?" Granting the extensions of time, then, would amount to not respecting the agreement entered into by the parties to the collective agreement. That is certainly not what paragraph 61(b) of the *Regulations* was drafted for.
>
> *The Board would like the UCCO-SACC-CSN to make submissions as to how the 20 applications for extension of time summarized above substantially differ from the* Kunkel *or from the* Callegaro *cases.*
>
> *On the basis of that submission, the Board might render a decision on those 20 files, ask for further submissions or schedule the cases for hearing.*
>
> . . .
>
> [Emphasis in the original]

[10] On December 20, 2012, the union provided the following reply to the Board registry's letter of November 2, 2012 in reference to Mr. Sonmor's request:

> . . .
>
> *This is further to your letter dated November 2, 2012, in which you requested the union to make submissions as to how the twenty (20) applications for extension of time substantially differ from the Kunkel and/or the Callegaro cases.*
>
> *With respect to the above-noted file, there has been a mistake in the transcription on the form 20. As a matter of fact, while the transmittal to third level occurred on May 7, 2011 (07/05/2011), the date noted on the form 20 was July 5, 2011 (05/07/2011). This administrative error hence resulted in the tardy referral to adjudication as the deadline was calculated as of July 5, 2011.*
>
> *We respectfully submit that this administrative error should not prejudice the grievor.*
>
> . . .

[11] It should be noted that the documentation on Mr. Sonmor's file includes a copy of the form used to transmit the grievance to the final level of the grievance procedure. Mr. Sonmor wrote "7 May/2011" for his date of signature. The union representative wrote "2011-05-07" and the immediate supervisor "2011/05/07" for their dates of signature. There is also a stamp on the form indicating "May 18/2011" as the date

when the form was received at "Staff Relations & Compensation." The union points to these dates as the source of error in referring the grievance to adjudication on time, indicating that the dates in issue were read by it as indicating July rather than May.

[12] On January 28, 2013, the union responded that the request for an extension of time for Mr. Slater did not substantially differ from the *Kunkel* or the *Callegaro* case. It submitted that the oversight of the bargaining agent representative did not differ from those two cases.

[13] Considering that the parties were informed on November 2, 2012 that a decision might be rendered without further submissions or without an oral hearing, I have decided that I have enough uncontradicted information on file, including the December 20, 2012 and the January 28 and 29, 2013 submissions, to make a decision on these applications.

Reasons

[14] These two applications are almost identical in nature to 12 other applications made by the same union on behalf of some of its members and for which I rendered a decision in January 2013 (see *St-Laurent et al. v. Treasury Board (Correctional Service of Canada),* 2013 PSLRB 4).

[15] The applicants admitted that they were late transmitting their grievances to adjudication. That fact is not disputed. According to clause 20.13 of the collective agreement, the respondent had 30 days in which reply to the grievance at the final level of the grievance procedure, failing which the grievance could then be referred to the next level, adjudication. The respondent did not respond to these grievances within those 30 days. According to subsection 90(2) of the *Regulations*, at the end of those 30 days, the applicants had 40 days to refer their grievances to adjudication. They did not respect that timeline and were late by a few weeks in referring the grievances to adjudication. After admitting being late, the union applied for extensions of time for the applicants.

[16] Applications for extensions of time are made under section 61 of the *Regulations*, which reads 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] Obviously, the parties did not agree to extend the time limit for the respondent to reply to the grievances or for the applicants to refer their grievances to adjudication. Otherwise, these applications would not be in front of me. However, according to paragraph 61(*b*) of the *Regulations*, applications to extend time limits can be allowed in the interest of fairness.

[18] The criteria to be considered for deciding an application for an extension of time are outlined in *Schenkman*. They are the following:

- clear, cogent and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the applicant;
- balancing the injustice to the applicant against the prejudice to the respondent in granting the extension; and
- the chance of success of the grievance.

[19] As has previously been decided by this Board on many occasions, those criteria are not necessarily equally important. The facts adduced must be examined to decide each criterion's weight. Some criteria might not apply, or only one or two might weigh in the balance.

[20] In these cases, the union, on behalf of the applicants, stated that the delays to refer the grievances to adjudication resulted from a clerical error, in Mr. Sonmor's case, and from an oversight, in Mr. Slater's case, by a bargaining agent representative. No other reasons were submitted to explain the delay in either case.

[21] The facts of these applications are comparable to the facts in *Kunkel* and in *Callegaro*, in which the time limit in the collective agreement or in the *Regulations* was not respected because of errors or omissions on the part of the union. Both decisions were rendered in 2012, and in both cases the Vice-Chairperson concluded that errors or omissions from the union were not clear and cogent reasons to explain why the time limits were not respected. On that point, I wrote the following in *Callegaro*, bringing this quote to the attention of the union in the request for submissions in this case dated November 2, 2012:

. . .

> *[19] . . . The union's omission, negligence or mistake is not a cogent and compelling reason for extending the time. No jurisprudence was submitted to support such proposition. The applicant or her union were not prevented from referring the grievances to adjudication. They were simply negligent, and they did not do it within the legal time frame. In that respect, the applicant and her union cannot be considered as two separate entities as implied by the applicant's argument that she should not "pay" for her union's omissions.*

> *[20] If the delay is not justified by clear, cogent and compelling reasons, the other factors are of little relevance. Otherwise, as I wrote in* Lagacé, *"[w]hat purpose would the time limits agreed to by the parties to a collective agreement serve if the Board's Chairperson could extend them based on an application not strongly justified?" Granting the extensions of time, then, would amount to not respecting the agreement entered into by the parties to the collective agreement. That is certainly not what paragraph 61(*b*) of the* Regulations *was drafted for.*

. . .

[22] The union was not able to provide any reasons that would distinguish these cases from the decisions in *Kunkel* and *Callegaro*. There are therefore no clear, cogent and compelling reasons for granting an extension of time and accepting the applications. In that context, the other factors for deciding applications for extensions of time are not relevant. Considering what was submitted to me, I see no reason to accept these applications and to depart from the Board's recent jurisprudence in comparable cases.

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

(The Order appears on the next page)

Order

[24] The applications for extensions of time are denied.

[25] The grievances in PSLRB File Nos. 566-02-5794 and 6134 are ordered closed.

March 4, 2013.

Renaud Paquet,
Vice-Chairperson