Date: 20130116

Files: 568-02-237, 238 and 253 to 262
XR: 566-02-5332, 5333, 6241, 6247 to 6254 and 6288

Citation: 2013 PSLRB 4

Public Service Labour Relations Act

Before the Chairperson

BETWEEN

REBECCA ST-LAURENT, JARET CLEMENT, JOHN COPEMAN, JENNIFER NEWPORT, ROBERT QUINN, ALLAN TEVENDALE AND KEVIN DOYLE

Applicants

and

TREASURY BOARD
(Correctional Service of Canada)

Respondent

Indexed as
St-Laurent et al. 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 and Sheryl Ferguson, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Respondent: Eric Daoust and Maureen Harris, Treasury Board Secretariat

Decided on the basis of written submissions
filed June 15 and 21, July 28, December 13, 16, 20, 22 and 29, 2011,
and January 7, 2013.

Applications before the Chairperson

[1] Rebecca St-Laurent, Jaret Clement, John Copeman, Jennifer Newport, Robert Quinn, Allan Tevendale and Kevin Doyle ("the applicants") are correctional officers working at either the Warkworth or the Bath Institution in Ontario. In 2010 and 2011, they all filed grievances against the Correctional Service of Canada ("the employer"), which grievances were all referred to adjudication at various times in 2011. In each case, the employer objected to the referral on the basis that the applicant was late in referring his or her grievances 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"). The applicable collective agreement is the one signed by the employer 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] In September 2010, Ms. St-Laurent filed two grievances alleging that the employer failed to provide her with copies of some complaints made against her and to give her proper notice before a disciplinary meeting. The union transmitted the grievances to the final level of the grievance procedure on January 12, 2011. The employer did not respond to the grievances at the final level within the timeline specified in the collective agreement. On May 16, 2011, the Board informed the employer that the union had referred the grievances to adjudication on May 11, 2011. On June 15, 2011, the employer objected to an adjudicator's jurisdiction to hear the grievances on the basis that they were not referred to adjudication within the prescribed time limit. On June 21, 2011, the union requested an extension of time on behalf of Ms. St-Laurent. In its request, it wrote that ". . . the tardy referral was a result of an oversight by a bargaining agent representative" and that Ms. St-Laurent should not be negatively affected by that error.

[4] In May 2011, Mr. Clement grieved the employer's decision to not pay him acting pay for the days on which he was asked to act as a trainer. The union transmitted the grievance to the final level of the grievance procedure on June 27, 2011. The employer did not respond to the grievance at that level within the timeline specified in the collective agreement. On November 14, 2011, the Board informed the employer that the union had referred the grievance to adjudication on November 4, 2011. On December 13, 2011, the employer 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.

[5] In March 2011, Mr. Copeman grieved the employer's decision to not pay him acting pay for the days on which he was asked to act as a trainer. The union transmitted the grievance to the final level of the grievance procedure on July 21, 2011. The employer did not respond to the grievance at that level within the timeline specified in the collective agreement. On November 23, 2011, the Board informed the employer that the union had referred the grievance to adjudication on November 21, 2011. On December 16, 2011, the employer 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] In March and April 2011, Ms. Newport, Mr. Quinn, Mr. Tevendale and Mr. Doyle also grieved the employer's decision to not pay them acting pay for the days on which they were asked to act as a trainers. The union transmitted the grievances to the final level of the grievance procedure on July 21, 2011. The employer did not respond to the grievances at that level within the timeline specified in the collective agreement. On November 16, 2011, the Board informed the employer that the union had referred the grievances to adjudication on November 4, 2011. On December 16, 2011, the employer objected to an adjudicator's jurisdiction to hear the grievances on the basis that they were not referred to adjudication within the prescribed time limits.

[7] On December 20, 2011, the union requested an extension of time on behalf of Mr. Clement, Mr. Copeman, Ms. Newport, Mr. Quinn, Mr. Tevendale and Mr. Doyle. In support of its demand, among other things, it wrote the following:

. . .

> *The respondent has filed objections based on timeliness of the referral to adjudication. As the respondent stated in submission the referral was three weeks late being referred. The delay was a result of an oversight of the bargaining agents elected representative. In fairness the grievors' rights should not be negatively affected by the bargaining agent's elected representative's error. . . .*
>
> . . .
>
> [*Sic* throughout]

[8] On December 22 and 29, 2011, the employer 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 did not support their requests for extensions of time with any legitimate reasons. It referred me to *Deputy Head (Public Health Agency of Canada) v. Sharaf*, 2009 PSLRB 115.

Supplementary applicant's submissions

[9] 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 made 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.

[10] The following are extracts from the letter sent to the union on November 2, 2012, about these 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 files 568-02-237 and 238, the grievor was a few weeks late in referring her grievances to adjudication. The bargaining agent wrote on June 21, 2011, that "the tardy referral was a result of an oversight of the bargaining agent representative".*

. . .

- *In files 568-02-253 to 262, the grievors were a few weeks late in referring their grievances to adjudication. The bargaining agent wrote on December 20, 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]

[11] On January 7, 2013, the union provided the following reply to the Board registry's/ letter of November 2, 2012:

. . .

> *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.*
>
> *First, it has to be noted that the Employer's objection dated June 15, 2011 [*St-Laurent*], December 13, 2011 [*Clement*] and December 16, 2011 [others] only refers to the tardy referral to adjudication. Consequently, our reply is limited to the latter.*
>
> *We respectfully submit that the "oversight of the bargaining agent elected representative" does not differ from the* Kunkel *and/or the* Callegaro *matters.*

. . .

[12] Considering that the union was 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 January 7, 2013 submissions, to make a decision on these applications.

Reasons

[13] 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 employer shall normally reply to a grievance at the final level of the grievance procedure within 30 days of the grievance being transmitted to that level. The employer did not respond 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 to refer the grievances to adjudication. After admitting being late, the union applied for extensions of time for the applicants.

[14] 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.*

[15] Obviously, the parties did not agree to extend the time limit for the employer 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 by the Chairperson in the interest of fairness.

[16] The criteria to be considered for deciding an application for an extension of time are outlined in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1. 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.

[17] 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.

[18] In these cases, the union, on behalf of the applicants, stated that the delays to refer the grievances to adjudication resulted from ". . . an oversight by a bargaining agent representative." No other reasons were submitted to explain the delays.

[19] The facts of these applications are comparable to the facts in *Kunkel* and in *Callegaro*, in which the time limit of the collective agreement or of 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-Chairpersons concluded that errors or omissions on the part of the union did not constitute 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 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.*

…

[20] The union was not able to provide any reasons which would distinguish these cases from *Kunkel* and *Callegaro*. There are therefore no clear, cogent and compelling reason 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.

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

(The Order appears on the next page)

Order

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

[23] The grievances in PSLRB File Nos. 566-02-5332, 5333, 6241, 6247 to 6254 and 6288 are ordered closed.

January 16, 2013.

Renaud Paquet,
Vice-Chairperson