

**Date:** 20130510

**Files:** 566-32-4808 and 4809

**Citation:** 2013 PSLRB 51



*Public Service  
Labour Relations Act*

Before an adjudicator

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BETWEEN

**HEIDI HOWITT**

Grievor

and

**CANADIAN FOOD INSPECTION AGENCY**

Employer

Indexed as

*Howitt v. Canadian Food Inspection Agency*

In the matter of individual grievances referred to adjudication

**REASONS FOR DECISION**

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

***For the Grievor:*** Dan Fisher, Public Service Alliance of Canada

***For the Employer:*** Gillian Paterson, counsel

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Heard at Toronto, Ontario,  
April 16, 2013.

## REASONS FOR DECISION

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### **Individual grievances referred to adjudication**

[1] On March 2, 2009, Heidi Howitt (“the grievor”) presented a grievance with the support of her bargaining agent, the Public Service Alliance of Canada (“the bargaining agent”). The grievor alleged that the termination of her employment from the Canadian Food Inspection Agency (CFIA or “the employer”) was both without cause and discriminatory.

[2] In its response, the CFIA alleged that it was justified in terminating the grievor’s employment because she had failed to report to work, without any explanation, to a position that had been deemed within her medical limitations. According to the CFIA, the grievor, who had sustained a work-related injury, had undergone a functional abilities evaluation and an ergonomic assessment through the Ontario Workplace Safety and Insurance Board (WSIB), which had confirmed that, although the grievor could no longer perform the functions of her substantive position, she could perform the duties of a PM-02 import specialist position. It was further alleged that, despite numerous attempts by the CFIA to make plans for the grievor’s return to work in the accommodated position, she failed to respond to the employer’s letter of offer and to report to work.

[3] The grievance was referred to adjudication before the Public Service Labour Relations Board (“the Board”) on November 15, 2010 and, after consultation with the parties, was scheduled to be heard from November 21 to 24, 2011, in Toronto, Ontario.

[4] On October 27, 2011, the bargaining agent requested a postponement on the ground that it had been unable to communicate with the grievor in order to obtain instructions and prepare for the hearing. The bargaining agent added that it suspected that certain health issues could have been preventing the grievor from providing it with instructions but offered no particulars or documentation to substantiate its suspicion. The parties were directed to attend the scheduled hearing and to argue any request or motion they wished to make at the outset of the proceeding. They were also encouraged to lead evidence in support of their respective positions.

[5] On November 10, 2011, the bargaining agent submitted a second request for a postponement, this time on the ground that the grievor’s representative was undergoing surgery and would be unable to attend the scheduled hearing. Medical

documentation was provided to substantiate the representative's pending surgery. The second postponement request was granted, and the matter was adjourned *sine die*.

[6] On September 14, 2012 the parties were informed that the matter had been tentatively set for April 16, 2013 and to notify the Board if they were not available. No such notification was received by the Board. On October 19, 2012, the parties were advised that the matter was set for hearing from April 16 to 19, 2013 in Toronto, and that those hearing dates were considered final.

[7] On March 26, 2013, the bargaining agent requested a further postponement of the scheduled hearing, again on the ground that it had been unable to communicate with the grievor in order to obtain instructions and prepare for the hearing. Once again, the bargaining agent reiterated its suspicion of possible underlying health issues with the grievor but yet again offered no particulars or documentation to substantiate its statement. For a second time, the parties were directed to attend the scheduled hearing and to argue any request or motion they wished to make at the outset of the proceeding.

[8] On the first day of the hearing, the grievor was not in attendance, and the bargaining agent reiterated, at the outset, its request for an adjournment of the proceeding. The bargaining agent's representative stated that he had made several attempts to reach the grievor by telephone, mail and email, without success. In fact, according to him, the last conversation between the bargaining agent and the grievor had taken place in the spring of 2009. He added that he was in no position to offer any speculation as to if and when the situation would change. Once again, the bargaining agent representative alluded to a suspicion that some medical reason could possibly explain the grievor's behaviour but conceded that he had no substantive evidence to place before me and that therefore he could not establish a cogent medical explanation for her behaviour.

[9] The employer opposed the request for a postponement and brought a motion to have the matter dismissed as having been abandoned. According to the employer, the grievor in the past had demonstrated behaviour that suggested that she had no real desire to pursue her grievances or claims. It referred me to a letter dated May 21, 2009 from the WSIB confirming the grievor's withdrawal of a claim, to the fact that a mediation in a prior unrelated grievance proceeding that had been scheduled at the grievor's request had to be cancelled because of the bargaining agent's inability to

communicate with her, and to the fact that the grievor had failed to attend a grievance hearing before this Board on April 12, 2010, at which time she had been deemed to have abandoned that grievance. The employer referred me to *Howitt v. Canadian Food Inspection Agency*, 2010 PSLRB 75. In essence, the employer argued that it was ready and willing to proceed with the merits of the case, that this matter had been dragging on for too long, that the passage of time was and would continue to cause it prejudice, that the grievor had failed to demonstrate diligence in pursuing her case, and that the general public interest in an efficient administration of justice that avoids unwarranted delays was to be given due consideration. The employer referred me to *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39.

[10] For the reasons that follow, I denied the bargaining agent's request for a postponement and granted the employer's motion for the dismissal of the grievance on the basis that it had been abandoned.

### **Reasons**

[11] This matter has been scheduled for a hearing twice, which followed numerous attempts by this Board to canvass the parties' availabilities. By the time this decision is issued, it will have been over 30 months since the bargaining agent referred the grievor's case to adjudication, and well over 4 years since the decision to terminate her employment was made.

[12] This is not the first time that the grievor fell off the face of the earth. In June 2005, she filed a grievance alleging that the CFIA had discriminated against her by failing to accommodate her physical disability. In February 2009, a mediation that had been scheduled at the grievor's request was cancelled because the bargaining agent had been unable to communicate with her. The grievance was subsequently scheduled to be heard by the Board on August 18, 2009, in Toronto, but was adjourned at the bargaining agent's request because it was unable to communicate with the grievor. The matter was rescheduled to be heard on April 12, 2010, but shortly before the hearing, the bargaining agent requested another adjournment on the same ground. The Board advised the parties that arguments would have to be made at the outset of the scheduled hearing, at which time the bargaining agent confirmed its position that the grievor had abandoned her grievance, and it withdrew the grievance. The facts surrounding that grievance can be found in the previously referred to *Howitt* decision.

[13] In this case, the bargaining agent has stated on at least three separate occasions that it is unable to communicate with the grievor and hence unable to obtain instructions and secure her attendance at the hearing. To protect the grievor's interests, the bargaining agent has repeatedly requested postponements on her behalf on the basis that it is unable to establish any form of communication with her. Unfortunately, it has been unable to provide me with any reasonable prospect that this situation will soon change or to convince me that the grievor will eventually pursue this grievance. It is fair to assume that this file will remain open for a very lengthy time if the bargaining agent's request is granted.

[14] The facts I have before me, all of which were gathered from the documents and file materials maintained by the Board in PSLRB File Nos. 566-32-4808 and 4809, reveal a grievor who is not prepared to assume the responsibility of diligently pursuing her case or to assist her representative in bringing this matter to a hearing by actively participating in this adjudicative process.

[15] While it may be that an underlying health issue is at play, which could potentially explain the grievor's behaviour, no substantive or cogent medical evidence was placed before me. Therefore, I have no reason to believe that, other than out of pure speculation, a medical condition is restricting the grievor's ability or capacity to participate in her grievance. In the absence of such evidence, I must favour the employer's interests of bringing finality to a matter that is soon to be in its fifth year over that of a grievor yet to be heard.

[16] In *Fletcher*, this Board considered a third interest at play, that of the general public interest, in considering requests for dismissal on the ground of abandonment. The Board noted that this interest had come into play to the extent that the grievor appears not to have co-operated with the efforts to provide her a hearing. That Board stated as follows:

...

*[36] I believe that there is also a third interest at play in this matter, although perhaps from the background. It is the general public interest in an efficient administration of justice that avoids undue delays, promotes the final resolution of conflict and is respected by the parties. This interest becomes a concern in this case, to the extent that the grievor appears not to have cooperated with the efforts to*

*provide her a hearing and to have disregarded the Chairperson's notices and instructions. To some extent, a decision to grant a further postponement in this context could be read by others as rewarding behaviour that undermines a well-functioning dispute resolution process.*

. . .

[17] For these reasons, I find that the bargaining agent's request for a postponement of this matter must be denied. Further, given that the grievor failed to attend this proceeding, that she failed to provide anyone with any reason for her absence, that she failed to provide her representative with any instructions during the past four years, that she failed to demonstrate due diligence in pursuing her grievance and that there is no reasonable prospect that she will do so in the relatively near future, I find that the grievor has in effect and for all intents and purposes abandoned the grievance she initiated on February 18, 2009, when she signed the grievance form. I simply can arrive at no other conclusion. Therefore, an order dismissing her grievance is both warranted and appropriate.

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

*(The Order appears on the next page)*

**Order**

[19] The request for a postponement of the hearing is denied.

[20] The grievance is dismissed.

May 10, 2013.

**Stephan J. Bertrand,  
adjudicator**