

**Date:** 20161004

**File:** 569-02-156

**Citation:** 2016 PSLREB 103

*Public Service Labour Relations  
and Employment Board Act and  
Public Service Labour Relations Act*



Before a panel of the  
Public Service Labour Relations  
and Employment Board

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BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**

Bargaining Agent

and

**TREASURY BOARD OF CANADA**

Employer

Indexed as

*Public Service Alliance of Canada v. Treasury Board of Canada*

In the matter of a policy grievance referred to adjudication

**Before:** Margaret T.A. Shannon, a panel of the Public Service Labour Relations and  
Employment Board

**For the Bargaining Agent:** Amarkai Laryea, Public Service Alliance of Canada

**For the Employer:** Karen Clifford, counsel

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Decided on the basis of written submissions,  
filed July 27 and 28, 2016.

## REASONS FOR DECISION

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### **I. Policy grievance referred to adjudication**

[1] The bargaining agent, the Public Service Alliance of Canada (PSAC), filed a policy grievance on March 31, 2014, alleging that the Treasury Board of Canada (“the employer”) failed to implement the Technical Services (TC) collective agreement (“the collective agreement”), which the parties had entered into on August 1, 2013, within the time limits set out in it.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the new Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”) before November 1, 2014, is to be taken up and continue under and in conformity with the Act as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

### **II. Summary of the evidence**

[3] The evidence in this decision is based on an agreed statement of facts that the parties jointly submitted.

[4] On August 1, 2013, the PSAC and the employer entered into a tentative agreement. On September 19, 2013, the PSAC ratified it. On October 18, 2013, the parties signed it. On March 10, 2014, the employer made an application to the former Board, requesting an extension to the agreement’s implementation period pursuant to s. 117 of the Act. On March 13, 2014, the PSAC wrote to the former Board, objecting to the employer’s application. On March 18, 2014, the employer wrote to the former Board and withdrew its extension request on the basis that it did not fall under s. 117(a). On March 31, 2014, the PSAC filed this policy grievance pursuant to s. 220 and on July 4, 2014, referred it to adjudication. On January 13, 2015, the employer issued the final-level response to the policy grievance, granting it. Further, the parties consented to a Board Member issuing a declaration that the employer contravened its contractual obligation under the collective agreement by failing to fully implement its terms (24% of which were outstanding) within the prescribed 150 days.

[5] The parties seek a decision by the new Board incorporating the following declaration:

*The employer contravened its contractual obligation under the Technical Services (TC) collective agreement by failing to fully implement the terms of the agreement (24% outstanding) within the prescribed 150 days. The parties further agree that such Declaration of the Board fully resolves this matter.*

[6] The parties filed written submissions on the issue of whether the new Board has jurisdiction to issue a declaration in this case since the employer granted the grievance after it had been referred to adjudication, and there now appears to be no live issue.

### **III. Summary of the arguments**

#### **A. For the grievor**

[7] It is significant that the final-level response in this matter was issued on January 13, 2015, which was clearly after the July 4, 2014, referral to adjudication. That response is not equivalent to the force and effect of a declaration from the new Board and does not vitiate its jurisdiction to order the requested remedy. The former Board, under what is now s. 12 of the *Act*, determined that it could use its authority under that section as necessary to resolve a dispute because doing so would be rationally linked to and incidental to the objects of the *Act* (see *Public Service Alliance of Canada v. Treasury Board*, 2010 PSLRB 88).

[8] In *Puxley v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-22284 (19940705), the Public Service Staff Relations Board ruled that an employer is at liberty to modify a disciplinary sanction during or even after the grievance process but before a referral to adjudication, thus removing the matter from the Board's jurisdiction. Once a grievance has been properly referred to adjudication, an employer may not unilaterally extinguish the Board's jurisdiction by purporting to alter the penalty that was imposed.

[9] Although a policy grievance is not a disciplinary grievance, the situations are analogous as far as the new Board's jurisdiction is concerned. Furthermore, it is within the spirit of the *Act* and the new Board's discretion under s. 232 that the requested declaration be issued.

**B. For the employer**

[10] There can be no dispute that it is within the new Board's powers to issue a declaration that the collective agreement has been breached. Board members and adjudicators have broad powers under the *Act* to make the order that the adjudicator or the new Board considers appropriate in the circumstances. The question is whether the acknowledgement in the final-level response is equivalent in force and effect to a declaration of the new Board. Furthermore is the question as to whether that response is sufficient to vitiate the new Board's jurisdiction, given that it is dated six months after the grievance was referred to adjudication.

[11] The decision in *Bélanger v. Treasury Board (Canada Border Services Agency)*, 2012 PSLRB 42, is on point. In it, following a referral to adjudication, the parties requested that the hearing be cancelled and that a presented consent order be endorsed by the former Board and incorporated in its decision. Based on that case, the employer submits that resolving this policy grievance by way of the agreed-to declaration would be in the best interests of harmonious labour relations.

**IV. Reasons**

[12] The parties' representations have convinced me that I have jurisdiction to issue the declaration that they jointly seek. The employer's final-level response, issued more than six months after the referral to adjudication was made, cannot oust the new Board's jurisdiction because at the time the referral was made, there was a live issue. One must focus on the facts at the time the reference to adjudication was made to determine whether the new Board has jurisdiction to hear and decide a grievance (see *Parkolub and Hu v. Canada Revenue Agency*, 2007 PSLRB 64, and *Puxley*). The new Board's jurisdiction over a matter is fixed as of the date it is referred to adjudication. As of that date, the former Board had jurisdiction, and the employer could not oust it by issuing a final-level response after that date.

[13] Having concluded that I have jurisdiction to deal with this matter, and having concluded that on the basis of the parties' representations and consent that the requested declaration is in the best interests of harmonious labour relations between them, I agree to issue the requested declaration in full and complete resolution of all outstanding issues related to this policy grievance.

[14] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**V. Order**

[15] The policy grievance is allowed.

[16] On the consent of the parties in full resolution of all outstanding issues related to this policy grievance, I declare as follows:

*The employer contravened its contractual obligation under the Technical Services (TC) collective agreement by failing to fully implement the terms of the agreement (24% outstanding) within the prescribed 150 days. The parties agree that this Declaration of the Board fully resolves this matter.*

[17] File 569-02-156 is closed.

October 4, 2016.

**Margaret T.A. Shannon,  
a panel of the Public Service Labour  
Relations and Employment Board**