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*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

BETWEEN

RONALD BRENNAN

Grievor

and

**DEPUTY HEAD
(Statistics Canada)**

Respondent

Indexed as

Brennan v. Deputy Head (Statistics Canada)

In the matter of an individual grievance referred to adjudication

Before: Chantal Homier-Nehmé, a panel of the Public Service Labour Relations and
Employment Board

For the Grievor: No one

For the Respondent: Zorica Guzina, Counsel

Heard at Ottawa, Ontario
July 4, 2016

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] On June 4, 2009, Ronald Brennan (“the grievor”) was terminated from his employment as a Programmer Analyst at the CS-2 group and level in the Informatics, System Development Division with Statistics Canada in Ottawa (“the employer”) for unsatisfactory performance. On June 9, 2009, he grieved the termination of his employment. He requested that the termination be rescinded and that he be immediately reinstated in his position dating back to the day of the dismissal. He claimed compensatory and punitive damages plus interest against the employer. He requested to be made whole in all respects.

[2] The grievance was denied at the final level of the grievance procedure on March 29, 2012. On May 1, 2012 the grievance was referred to adjudication by the Professional Institute of the Public Service of Canada (“the Bargaining Agent”). The employer declined mediation on May 24, 2012.

[3] The grievance was filed with the former Public Service Labour Relations Board (“the former Board”) on March 22, 2013. 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 Board”) to replace the former Board. This grievance is being heard by the Board under the authority of the related implementing statutory instruments.

[4] At the grievor’s request, the hearing of his grievance, scheduled to take place in Ottawa, was postponed three times due to personal circumstances related to the fact that: he had moved to Dartmouth Nova Scotia to be the sole caregiver to his aging and ailing parents, and one health related incident he suffered in June 2015.

[5] The employer consistently objected to the postponement of the hearing on the grounds of prejudice, namely, that its witnesses’ memories would be negatively impacted. Notwithstanding its position, the employer was open to suggestions to facilitate the grievor’s attendance at the hearing, including a potential change in location of the hearing.

[6] The parties were notified on May 31, 2016, that the hearing was scheduled to be held from July 4 to the 7th, at 9:30 a.m., in hearing room 712 on the 7th floor of the West Tower of the C.D. Howe Building, 240 Sparks Street, in Ottawa.

[7] The grievor did not make a request to have a change of hearing location. When his fourth request for a further postponement of the hearing to July 2017 was denied, he indicated that he would not be participating in the hearing of his grievance but would be providing written submissions.

[8] At the commencement of the hearing, the employer moved that the grievance be dismissed as abandoned on the basis of the information on file before the Board and the fact that the grievor did not attend the hearing. For the reasons that follow, the employer's motion is allowed.

II. Background

[9] On May 25, 2012 the Bargaining Agent indicated that it was not available for the hearing on the proposed dates of January 7 to 11, 2013. For reasons unknown, the Bargaining Agent withdrew representation on August 21, 2012. It indicated that the grievor had moved to Dartmouth Nova Scotia and that he would be representing himself. On August 29, 2012 he confirmed the information provided by his Bargaining Agent.

[10] On November 16, 2012, he was informed that the hearing of his grievance was scheduled for May 6-10 and May 13-15, 2013 in Ottawa, Ontario. He was requested to inform the Board by no later than November 30, 2012 if he was unavailable. The grievor did not indicate his unavailability.

[11] On December 17, 2012 the grievor was informed that the May 2013 hearing dates were considered final. On January 15, 2013, the grievor wrote to the Board informing it that he was an only child and the sole caregiver of his parents aged 92 and 95 who were still living alone in their own home. He indicated that both of his parents had serious medical conditions which prevented him from participating in the hearing of his grievance. He requested that the hearing be postponed indefinitely.

[12] The employer consented to the postponement of the May, 2013, hearing dates however it did not consent to an indefinite postponement. The employer requested that the hearing be rescheduled in October or November 2013.

[13] The grievor responded that the employer had provided no good faith reason to object to the indefinite postponement of the hearing of his grievance and that it was

trying to cause him undue hardship. He requested that the hearing of his grievance be held in abeyance until May 2014.

[14] On February 12, 2013, the Board informed the grievor that his request for postponement of the May 2013 hearing was granted. However, his request that the grievance be held in abeyance until May 2014 was denied. The Board indicated that the grievance would be scheduled in accordance with the Board's usual practice.

[15] On May 25, 2015 the Board scheduled the hearing of his grievance for September 28 to October 2, 2015, in Ottawa. On June 11, 2015 the grievor wrote to the Board and again requested that the hearing be postponed for at least a year from the scheduled date. He relied on the same reasons as before, indicating that he was the sole caregiver for his aging and ailing parents. He also stated that he had recently been hospitalised for a day on account of health issues.

[16] In its response, the employer indicated that it continues to accrue potential liability in this matter as the memory of its witnesses may be affected by further unwarranted delay. Given the grievor's health, the employer consented to a brief postponement in order to give him the time to recover and make the necessary arrangements for the welfare of his parents while he attends the hearing. The employer indicated that it would be agreeable to exploring potential hearing dates in January 2016 provided the grievor's health permitted same.

[17] On June 24, 2015 the grievor's request for the postponement of the September and October, 2015 hearing dates was granted on account of his health and was rescheduled to January 4 to 8, 2016 in Ottawa, Ontario.

[18] On September 4, 2015 the grievor wrote to the Board indicating that he would not be available for the January 2016 tentative hearing dates. Again he reiterated the fact that he was the sole caregiver for his aging and ailing parents and the fact that he was still unsure as to what was the cause of him having suffered the illness that hospitalized him eight months prior.

[19] The Board tentatively rescheduled the hearing to July 4 to 8, 2016 in Ottawa, Ontario. On March 18, 2016 the employer noted the Board's unprecedented flexibility at repeatedly granting Mr. Brennan's requests for postponement. It indicated that although it continued to be empathetic to the grievor's circumstances, it also

continued to accrue potential liability in this matter. The witnesses' ability to provide testimony would be affected, which would result in prejudice to the employer. For these reasons, the employer objected to the hearing being postponed further.

[20] In that same email, the employer indicated that it was open to facilitating the grievor's attendance at the hearing, including a potential change in the hearing location. It argued that, in the absence of any indication on the grievor's part that a hearing be scheduled in the foreseeable future and based on the repeated pattern of requests for indefinite postponements, the grievance should be considered abandoned.

[21] In response to the employer's email, the grievor asked the Board to summarily deny the employer's request and to, again, postpone the July 2016 hearing dates on account of the same reasons he provided in the past: he is the sole caregiver to his aging and ailing parents and the medical condition that he suffered in June 2015.

[22] On April 5, 2016, the grievor made another request to postpone the July 2016 hearing dates for an additional year. On April 14, 2016 the Board denied the grievor's request for an additional postponement and informed the parties that the hearing dates scheduled to take place from July 4 to 8, 2016 in Ottawa were final. The grievor did not request to have the hearing location changed as the employer suggested.

[23] On June 27, 2016 the grievor informed the Board that he would not be attending the July 4 to 8, 2016 hearing dates and requested that the Board instead accept his written submissions. On June 27, 2016, the Board denied the grievor's request and informed him that it would be proceeding with an oral hearing on the merits of his grievance. He was reminded that if he failed to attend the hearing or any continuation thereof, the Board could dispose of the matter on the evidence and representations made at the hearing without further notice to him. On that same day, the grievor acknowledged having received the Board's decision.

III. Issue

[24] The issue to be determined is whether, on the basis of the information before the Board and the grievor's conduct, the grievance has been abandoned.

IV. Summary of the arguments

[25] At the outset of the hearing on July 4, 2016 at 9:30 a.m. the employer moved that the grievance be dismissed as abandoned. The employer argued that the grievance

dated back to 2009 and had been postponed a number of times at the grievor's request. The grievor presented no new evidence about his health. Although the employer was empathetic to his personal circumstances, it could no longer wait to have the grievance heard.

[26] The employer's ability to present its case was severely impacted as many of its witnesses had retired and a significant amount of time, seven years, had passed since the initial events that gave rise to the grievor's termination. Moreover, the grievor did not request a change of hearing location even though it was proposed by the employer. The employer was prepared to incur expenses to have its witnesses travel to Dartmouth, Nova Scotia to accommodate the grievor's personal circumstances. He did not demonstrate any initiative or attempts to obtain assistance for the temporary care of his parents so that he could participate in the hearing of his grievance.

[27] The grievor had full knowledge of the consequences of not appearing at the hearing. He was put on notice through emails from the Board and in the notice of hearing. Given these circumstances, the employer's position is that the grievor has abandoned his grievance.

V. Reasons for decision

[28] On the basis of the information contained in the Board's file and the grievor's own conduct, the grievance should be dismissed as abandoned. The employer referred me to *Cooper v. Deputy Head (Correctional Service of Canada)* 2013 PSLRB 119, *Synowski v. Deputy Head (Department of Health)* 2007 PSLRB 63, *Dupont v. Deputy Head (Office of the Director of Public Prosecutions)* 2012 PSLRB 82 and *Howitt v. Canadian Food Inspection Agency* 2010 PSLRB 75.

[29] In *Cooper*, the former Board determined that there is a general public interest in the efficient administration of justice that advances dispute resolution, prevents unnecessary delays and is respected by the parties. These principles equally apply to the present case.

[30] The grievor did not appear; nor did anyone appear on his behalf, despite having received the notice of hearing and knowing full well the implications of that decision: that if he failed to attend the hearing or any continuation thereof, the Board could

dispose of the matter on the evidence and representations placed at the hearing without further notice to him.

[31] Rather than seeking a change of location of the hearing as was proposed by the employer and demonstrating the steps that he had taken to arrange for the temporary care of his parents so that he could participate in the hearing of his grievance; on June 27, 2016, he provided the Board's registry office with a clear statement that he did not intend to be present at the adjudication hearing.

[32] He requested that the Board proceed by way of written submissions. Although the Board sometimes determines that grievance hearings proceed by way of written submissions, the Board was of the view that this practice did not lend itself to this termination grievance given that there are findings of facts and credibility at play. As a result, his request was denied. The Board's registry office referred him to the Board's practice note on the "*Presentation of evidence and examination of witnesses*" which is a guide for self-represented litigants and includes information about how the Board conducts its hearings.

[33] Since the time of the grievance referral in May 2012, the record clearly indicates that the grievor requested that his grievance be postponed indefinitely. On three occasions thereafter, he requested that the hearing be postponed for a period of a year at a time. Those postponements were for very long periods of time, the first being indefinitely and the other for a period of a least one year each. Each time, except for the hearing scheduled in June of 2015, the reason for making the request for postponement was always the same: the care of his aging and ailing parents.

[34] It is not up to the Board to suggest a change in hearing locations to facilitate the attendance of a grievor to its own grievance hearing, nor is it up to the Board to implement accommodation measures when they haven't been requested by the grievor himself. If the grievor truly had an interest in having his grievance heard, he would've made a request to have the hearing location changed to Dartmouth, Nova Scotia and would've requested accommodation measures from the Board to facilitate his attendance.

[35] Although the Board is empathetic to the grievor's personal circumstances, there is a public interest in the finality of matters. The hearing had been postponed at the grievor's request for a period of three years since it was initially scheduled.

Furthermore, I accept the employer's position that its ability to present its case would severely be impacted as seven years have passed since the initial events that gave rise to the grievor's termination.

[36] Therefore, based on the information before me and the fact that Mr. Brennan failed to attend the hearing on July 4, 2016, I conclude that the grievor clearly abandoned pursuing the adjudication of his grievance. In light of this conclusion, the grievance is dismissed.

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

(The Order appears on the next page)

Order

[38] The grievance is dismissed and the file is closed.

October 19, 2016.

**Chantal Homier-Nehmé,
a panel of the Public Service Labour
Relations and Employment Board**