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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

CHRIS OWENS

Grievor

and

**DEPUTY HEAD
(Department of Fisheries and Oceans)**

Respondent

Indexed as

Owens v. Deputy Head (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

Before: Stephan J. Bertrand, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Abudi Awaysheh, Public Service Alliance of Canada

For the Respondent: Karl Chemsy, counsel

Heard at Abbotsford, British Columbia,
April 24 and 25, 2018.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] Chris Owens (“the grievor”) was an employee for the Department of Fisheries and Oceans (“the respondent”) in its Fraser Valley West work location, in Abbotsford, British Columbia. On August 29, 2013, his employment was terminated for disciplinary reasons. He filed a grievance on September 4, 2013, for which he was represented by his bargaining agent the Public Service Alliance of Canada (“the Alliance”).

[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 to replace the Public Service Labour Relations Board and the Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 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; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] The grievor passed away on January 6, 2015.

[4] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (“the Act”).

[5] The Alliance referred the grievance to adjudication on December 17, 2015, under both section 209(1)(a) (interpretation and application of a provision of the collective agreement) and (b) (disciplinary action resulting in termination) of the *Act*. The Alliance also gave notice to the Canadian Human Rights Commission (“the Commission”) that the grievance raises an issue involving the interpretation of application of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

[6] The Commission has not notified the Board that it intends to make submission with regard to the human rights issue related to the grievance.

[7] In a letter dated March 21, 2018, the Board informed the parties that a hearing of this grievance would be held from April 24 to 26, 2018, in Abbotsford.

[8] On April 11, 2018, the Board received a letter from the Alliance advising it that it was withdrawing the grievance from adjudication.

[9] On April 12, 2018, I instructed the Registry to email the Alliance to remind it that while it might wish to withdraw its representation, which it had not done to date, it was not at liberty to withdraw the grievance without the express consent of the grievor's Estate ("the Estate"), as it pertained to a termination of employment.

[10] On April 16, 2018, the Alliance wrote to the Board that it was in the process of obtaining written consent from the Estate confirming that it agreed to withdraw the grievance from adjudication. The Alliance also referred to a number of conversations it had recently had with the Estate's executor about the upcoming hearing dates and for the need to confirm its withdrawal of the grievance from adjudication.

[11] On April 19, 2018, the Board took the additional step of sending a letter to the Estate by courier at the postal address that appeared in the file, which the Alliance had confirmed was the Executor's current postal address. The letter confirmed the hearing dates and location and advised the Estate that those dates were considered definitive and that its failure to appear at the hearing could be deemed an abandonment of the grievance. The Board also provided a contact email address and phone number in the letter.

[12] Since it had not been provided with the Estate's consent to withdraw the grievance, the Board did not cancel the hearing arrangements.

[13] The hearing began on April 24, 2018. None of the parties or their representatives attended.

[14] The Board adjourned the hearing until the following morning, posted a notice to that effect on the entrance door of the hearing room, and made arrangements for a conference call with the parties' representatives. During the call, the Board reminded the representatives that the Alliance could not withdraw this type of grievance without the Estate's consent, that no such consent had been obtained or provided to date, that the Alliance had not withdrawn its representation in these matters, and that at no time had the Board notified the parties that the hearing had been cancelled. The Board also indicated that the hearing would proceed on April 25, 2018, at 9:30 a.m.

[15] On April 25, 2018, the Board received a letter from the Alliance, dated April 24, 2018, indicating that it was withdrawing its representation in connection with the grievance.

[16] The hearing resumed on April 25, 2018, as scheduled. No one appeared on behalf of the Estate. The Board's Registry also confirmed that it had not been contacted by anyone from the Estate; nor had it received any correspondence from it. To this day, no one from the Estate has ever contacted the Board. The respondent appeared via teleconference.

Summary of arguments

[17] The respondent confirmed that it was ready to proceed via teleconference or videoconference. It asked that the grievance be dismissed due to abandonment. It argued that there was no reason to think that the Estate had been unaware of the hearing dates, given the notifications provided by both the Board and the Alliance. It also argued that the Estate was required to take reasonable steps to inquire about the status of the grievance.

Reasons

[18] The Board has often recognized that employers and the public have an interest in the timely and effective resolution of a dispute (see *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39, *Cardinal v. Deputy Head (Department of Citizenship and Immigration)*, 2013 PSLRB 137, and *Smid v. Deputy Head (Courts Administration Service)*, 2014 PSLRB 24.

[19] The Estate was required to take reasonable steps to inquire about and pursue the proceeding that it had referred to adjudication. It took none, despite the efforts deployed by the Board and the Alliance to keep it informed of the upcoming hearing dates. It failed to respond to the Alliance, it failed to respond to the Board, and it failed to appear at the hearing, although it had been made aware of the proceedings. To this day, it has never contacted the Board to inquire about the status of the grievance or to address the content of the letter sent by the Board on April 19, 2018.

[20] I am satisfied that the Estate was properly advised of the hearing dates and location for the hearing. This was confirmed by the Alliance during the conference call that was held on April 24, 2018. Correspondence and emails that preceded the hearing dates also support this point.

[21] In addition, the tracking detail of the courier company that was used to deliver the Board's April 19, 2018, letter suggests that a delivery card was left at the residence of the Estate's executor on April 20, 2018, which indicated that delivery had been attempted and that the letter was available for pick up at the courier company's office. It also suggests that the courier company contacted the Estate's executor on April 25, 2018. Despite all that, no one from the Estate has ever contacted the Board.

[22] I am also satisfied that the Estate had no intention of attending the hearing or of pursuing this grievance and that it deliberately ignored the many efforts of the Alliance to obtain its consent to withdraw the grievance, as well as those of the Board to contact it.

[23] I can do nothing else than conclude that the grievance has been abandoned. Therefore, the grievance is dismissed.

[24] I must also emphasize that the Board spent considerable public funds to prepare and hold the hearing and to have the parties appear. As dates were reserved for this hearing, other outstanding cases submitted to the Board could not be heard during that time.

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

(The Order appears on the next page)

Order

[26] The grievance is dismissed. I order the files closed.

July 5, 2018.

**Stephan J. Bertrand,
a panel of the Federal Public Sector
Labour Relations and Employment Board**