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Files: 566-02-8696 and 8697

Citation: 2019 FPSLREB 50

*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

KONRAD BINDAS

Grievor

and

**DEPUTY HEAD
(Canada Border Services Agency)**

Respondent

Indexed as
Bindas v. Deputy Head (Canada Border Services Agency)

In the matter of individual grievances referred to adjudication

Before: James Knopp, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Guido Miguel Delgadillo, Public Service Alliance of Canada

For the Respondent: Spencer Shaw, counsel

Decided on the basis of written submissions,
filed April 8, 2019.

REASONS FOR DECISION

Individual grievances referred to adjudication

[1] On June 19, 2013, Konrad Bindas (“the grievor”) referred to adjudication grievances challenging his suspension without pay and subsequent termination of employment. At that time, he was represented.

[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 as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 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 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) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[3] 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 *Public Service Labour Relations Act* 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*.

[4] The hearing of the grievances was scheduled for April 23 to 26, 2019, in Toronto, Ontario.

[5] I dismiss the grievances because I find, for the reasons which will follow, that the grievor has abandoned them.

Motion to dismiss the grievances for abandonment

[6] On April 8, 2019, the deputy head of the Canada Border Services Agency (“the respondent”) filed a “Motion to Dismiss” on the grounds that the grievor had abandoned his grievances.

[7] The motion to dismiss contains the following agreed statement of facts:

1. *On July 24, 2010, Mr. Bindas, the grievor, was suspended from work at the CBSA....*
2. *On July 7, 2011 the CBSA terminated Mr. Bindas' employment.*
- ...
6. *The Union has not had contact with Mr. Bindas since 2014.*
7. *[A hearing was scheduled for] April 23-26, 2019, in Toronto.*
8. *In preparing for the hearing the Union has made multiple attempts to contact Mr. Bindas to discuss his file. The Union's efforts to contact Mr. Bindas throughout February, March, and April of 2019, include sending letters by registered mail, telephoning last known numbers, reaching out to third parties for contacts, and searching for Mr. Bindas on social media.*
9. *The Union stated in its last letter to Mr. Bindas, that if he did not contact them by April 5, 2019 the Union would not be opposing a motion to dismiss his grievance.*
10. *As of April 7, 2019, Mr. Bindas has not contacted the Union.*

[8] The respondent argues that the grievor, who has not been heard from for years, made no attempt to contact his representative to provide it with any new contact information. The respondent requests that the Board find that the grievor has abandoned his grievances.

[9] On that same day, the grievor's representative advised the Board that it was no longer representing him. The motion to dismiss remains unopposed.

Reasons

[10] A grievor's failure to keep in touch with his or her representative, or if he or she is self-represented, to keep in touch with the Board, does not meet the very simple and basic obligation to show a continuing interest in the pursuit of a case.

[11] Paragraphs 13 and 14 of *Howitt v. Canadian Food Inspection Agency*, 2013 PSLRB 51, read as follows:

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.

[12] Paragraphs 77 and 78 of *McKinnon v. Deputy Head (Department of National Defence)*, 2016 PSLREB 32, read as follows:

77 Grievors have an obligation to pursue their cases with diligence and assist their representatives (if they are represented), be they bargaining agent representatives or legal counsel, in the steps that are necessary to bring their cases to hearing. This obligation includes, at a bare minimum, keeping their representatives informed of their current addresses as well as of a means to communicate with them, be it via email or telephone (smart phone, mobile phone, or old-fashioned landline). This allows their representatives to keep in touch with them to inform them of steps that may be taken for or against them and the potential scheduling of hearings of their cases.

78 The failure of a grievor to keep in touch with his or her representative does not meet the very simple and basic obligation placed upon him to pursue the case with due diligence.

[13] Those cases mirror the present matter in that the grievor has failed to remain in touch with his representative. A reasonable person would expect that the grievor would have maintained at the very least a minimum level of contact with his representative. Instead, he has not been heard from for over five years.

[14] The Board has no other means to contact the grievor than those that were at the disposal of his representative. Therefore, there are no reasonable prospects of ascertaining whether he still intends to pursue his grievances.

[15] I grant the motion on the grounds that the grievances have been abandoned.

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

(The Order appears on the next page)

Order

[17] The grievances are dismissed.

May 1, 2019.

**James Knopp,
a panel of the Federal Public Sector
Labour Relations and Employment Board**