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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

GURJINDER PANNU

Grievor

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Pannu v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector
Labour Relations and Employment Board

For the Grievor: Corinne Blanchette, Union of Canadian Correctional Officers -
Syndicat des agents correctionnels du Canada - CSN

For the Employer: Asira Shukuru, Treasury Board of Canada Secretariat

Decided on the basis of written submissions,
filed February 18 and 23 and March 8, 2013.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] At the relevant time, Gurjinder Pannu (“the grievor”) was employed by the Treasury Board (“the employer”) as a correctional officer with the Correctional Service of Canada (CSC), classified at the CX-01 group and level, and was working at Kent Institution in the CSC’s Pacific Region.

[2] At the relevant time, the grievor’s terms and conditions of employment were governed in part by a collective agreement that was signed on June 26, 2006, and that expired on May 31, 2010, between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the bargaining agent”) for all employees in the Correctional Services Group (“the collective agreement”).

[3] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; *PSLREBA*) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former 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*.

[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 PSLREB and the titles of the *PSLREBA*, the *PSLRA*, and the *Public Service Labour Relations Regulations* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* (“the Act”), and the *Federal Public Sector Labour Relations Regulations* (“the Regulations”).

II. Summary of the evidence

[5] On March 16, 2012, the grievor filed a grievance, which stated as follows:

DETAILS OF GRIEVANCE

When I came back from LTD my 12 hr. rotation and crew was taken away from me and I was put on 8 hr. shift Mon.. to Fri.. . This had not happened with any other officers who came back to work after being on LTD in past. Due to which my family and I suffered financial losses as I lost shift diff., stat. and OT and I had to drive 125 Kms each way without car pool as it got broken because of my rotation being taken away. And I had to take some time off on sick as per my Doctors advice and annual leave due to this situation. And I also took some time off without pay for the same.

CORRECTIVE ACTION REQUIRED

I would like to be compensated for all my financial loss and reimbursed on my sick and annual leave that I used bec. of this and also the time off without pay.

[Sic throughout]

[6] On April 2, 2012, the grievor transmitted the grievance to the second level of the grievance procedure. On May 18, 2012, despite the grievance having already been transmitted to the second level, the employer denied it at the first level.

[7] By letter dated September 27, 2012, the grievance was denied at the second level. It appears that the grievor received a copy of the second-level grievance reply on October 23, 2012, and that on November 2, 2012, he transmitted the grievance to the final level.

[8] The employer did not respond to the grievance at the final level within the timelines set out in the collective agreement. On January 4, 2013, the grievor referred it to the PSLRB for adjudication.

[9] On Thursday, January 17, 2013, the PSLRB's registry wrote to the parties, acknowledging receipt of the referral of the grievance to adjudication. A fax confirmation sheet discloses that the registry's letter was faxed at 11:21 a.m. on that day.

[10] On Monday, February 18, 2013, the employer wrote to the PSLRB, objecting to its jurisdiction to hear the grievance on the basis that the grievance was not timely.

The employer's objection is set out later in this decision in the summary of the arguments, as is the grievor's response and the employer's reply.

[11] This matter was originally scheduled for a hearing on October 8 and 9, 2019, in Abbotsford, British Columbia. However, after a meeting with representatives of the CSC and the bargaining agent with respect to matters other than this particular grievance, the Chairperson of the Board agreed to not schedule any hearings involving those groups during the week of October 7 to 11, 2019. As such, this matter was postponed and rescheduled to January 28 and 29, 2020, in Abbotsford.

[12] The parties requested a ruling on the matter of the timeliness objection before the hearing on the merits convened. This decision deals only with that objection.

A. The collective agreement

[13] Article 20 of the collective agreement is entitled "Grievance Procedure". The parts relevant to this objection state as follows:

...

20.03 *Except as otherwise provided in this Agreement, a grievance shall be processed by recourse to the following levels:*

(a) level 1 - first (1st) level of management;

(b) level 2 - intermediate level;

(c) final level - Deputy Head or Deputy Head's authorized representative.

...

20.10 *An employee may present a grievance to the First (1st) Level of the procedure in the manner prescribed in clause 20.05 not later than the twenty-fifth (25th) day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance.*

20.11 *The Employer shall normally reply to an employee's grievance, at any level in the grievance procedure, except the final level, within ten (10) days after the date the grievance is presented at that level. Where such decision or settlement is not satisfactory to the employee, he or she may submit a grievance at the next higher level in the grievance procedure within ten (10) days after that decision or settlement has been conveyed to him or her in writing.*

20.12 *If the Employer does not reply within fifteen (15) days from the date that a grievance is presented at any level, except the final*

level, the employee may, within the next ten (10) days, submit the grievance at the next higher level of the grievance procedure.

20.13 The Employer shall normally reply to an employee's grievance at the final level of the grievance procedure within thirty (30) days after the grievance is presented at that level.

...

20.15 The decision given by the Employer at the Final Level in the grievance procedure shall be final and binding upon the employee unless the grievance is a class of grievance that may be referred to adjudication.

20.16 In determining the time within which any action is to be taken as prescribed in this procedure, Saturdays, Sundays and designated paid holidays shall be excluded.

20.17 The time limits stipulated in this procedure may be extended by mutual agreement between the Employer and the employee and, where appropriate, the Union representative.

...

20.23 Where an employee has presented a grievance up to and including the Final Level in the grievance procedure with respect to:

- (a) the interpretation or application in respect of him or her of a provision of this Agreement or a related arbitral award,
- or
- (b) disciplinary action resulting in suspension or a financial penalty,
- or
- (c) termination of employment or demotion pursuant to paragraph 12(1)(c), (d) or (e) of the Financial Administration Act,

and the employee's grievance has not been dealt with to his or her satisfaction, he or she may refer the grievance to adjudication in accordance with the provisions of the Public Service Labour Relations Act and Regulations.

[Emphasis in the original]

III. Summary of the arguments

A. For the employer

[14] The employer submits that the Board is without jurisdiction to hear the matter as the grievance was transmitted to the third level of the grievance procedure and referred to adjudication outside the time limits prescribed by clauses 20.11 and 20.12 of the collective agreement and s. 90(2) of the *Regulations*.

[15] The grievor filed his grievance on March 16, 2012, and he received the employer's first-level reply on May 25, 2012. He transmitted his grievance to the second level on April 2, 2012. When he did not receive a reply at that level, he had until May 9, 2012, to refer his grievance to the final level. However, he did so only on November 2, 2012.

[16] Had the grievor referred his grievance to the final level by May 9, 2012, as required, the employer would have been obliged to reply at the final level by no later than June 21, 2012.

[17] With respect to the reference to adjudication, the grievor was obliged to refer his grievance to adjudication no later than August 1, 2012. The "Notice of Reference to Adjudication" was received on January 4, 2013, and therefore is also late.

[18] The employer requests that the Board dismiss the grievance without a hearing.

B. For the grievor

[19] The grievor refers to ss. 95 and 96 of the *Regulations*, which set out when a party may object to the reference to the Board on the basis that a time limit prescribed in a collective agreement or the *Regulations* has not been met. The grievor also referred me to s. 10 of the *Regulations*, which states that when the time limit for filing a document expires on a Saturday or holiday, it may be filed on the next day that is not a Saturday or holiday.

[20] The grievor submits that in its final-level reply, the employer did not object to the alleged untimeliness of the transmission of the grievance. As the grievance had not been rejected at the final level for the alleged failure to transmit within the time frames of the collective agreement, it could not be objected to on February 18, 2013, because the employer had not done so at the first opportunity. In this respect, the grievor referred to Brown and Beatty, *Canadian Labour Arbitration*, at para. 2:3130, *Lafrance v. Treasury Board (Statistics Canada)*, 2006 PSLRB 56, *Sidhu v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 76, and *McWilliams v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 58.

[21] The grievor also submitted that the employer received acknowledgement of the reference to adjudication of the grievance on January 17, 2013. Therefore, by virtue of s. 95(1), it should have filed the objection to jurisdiction no later than

30 days after that day. Thirty days after January 17, 2013, would have been Saturday, February 16, 2013. By virtue of s. 10 of the *Regulations*, the objection should have been filed the next day, which was February 17, 2013. As it was filed on February 18, 2013, it was therefore out of time. As such, since compliance with ss. 10 and 95 of the *Regulations* is mandatory, the objection is late and cannot be entertained.

C. The employer's reply

[22] In the absence of a final-level grievance reply from the employer, the grievor was required to refer his grievance to adjudication no later than 40 days after the date on which the final-level grievance reply was due. Accordingly, the grievance should have been referred to adjudication no later than August 1, 2012; it was referred on January 4, 2013, which was 5 months late.

[23] The employer indicated that it has complied with s. 95(1) of the *Regulations*, as its objection was filed before the expiry of the 30-day time limit. It received the January 17, 2013, letter from the Board notifying it of the reference of the grievance to adjudication on January 18, 2013. Thirty days from January 18, 2013, was Sunday, February 17, 2013. Even if the 30 days expired on Saturday February 16, 2013, as alleged by the grievor, the deadline to file the objection under s. 95(1) was still Monday, February 18, 2013, because the objection could not have been filed on Sunday, February 17, 2013. Sunday is a holiday, and s. 10 of the *Regulations* clearly stipulates that if the time frame to file a document expires on a Saturday or a holiday, the document may be filed on the next day following that is not a Saturday or a holiday. Sections 26 and 35 of the *Interpretation Act* (R.S.C., 1985, c. I-21) also provide guidance in this respect. Therefore, the employer has complied with s. 95 of the *Regulations*.

[24] With respect to the employer's alleged failure to provide a copy of the final-level grievance decision within 30 days of the reference to adjudication, the employer submits that ss. 95 and 96 are separate and distinct. Section 95 is subtitled "Deadline for raising objections". It specifies the conditions for the submission of a valid objection to timeliness, all of which the employer submits it has met.

[25] Section 96 of the *Regulations* speaks to the Board's requirement that copies of grievance replies should be filed within 30 days of a reference to adjudication. It

makes no reference whatsoever to either party filing objections and supports the employer's position that these sections operate independently of one another.

[26] The jurisprudence cited by the grievor is not relevant to the issue at hand.

IV. Reasons

[27] The grievance procedure in the federal public service is governed by the *Act*, the *Regulations*, and any group-specific collective agreement that may be entered into between an authorized bargaining agent and the employer with respect to employees in a particular bargaining unit.

[28] The parties agreed at article 20 of the collective agreement to certain terms and conditions governing the grievance procedure. As set out in that agreement, there are three levels in the procedure. If a grievor is unsatisfied with the employer's response at the final level, he or she may refer the grievance to adjudication (if it is a grievance that the Board would otherwise have jurisdiction over).

[29] Once a grievance has been filed at the first level, the employer must reply to it within 10 days, the calculating of which does not include Saturdays, Sundays, or holidays (clause 20.16 of the collective agreement). If the employer has not replied to the grievance at any particular level, except the final level, within 15 days of the date on which the grievance was received at that level, the grievor may transmit it to the next level within 10 days of that date. Clause 20.17 provides that by agreement, the parties may extend the time frames for taking the steps in article 20.

[30] Section 63 of the *Regulations* is found under the heading "Grievances", the subheading "General Provisions", and the marginal note "Rejection for failure to meet a deadline" and states as follows:

Grievances

General Provisions

...

Rejection for failure to meet a deadline

63 *A grievance may be rejected for the reason that the time limit prescribed in this Part for the presentation of the grievance at a lower level has not been met, only if the grievance was rejected at the lower level for that reason.*

...

[Emphasis in the original]

[31] Section 90 of the *Regulations* sets out the procedure for referring a grievance to the Board for adjudication and states as follows:

Deadline for reference to adjudication

90(1) Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.

Exception

(2) If no decision at the final level of the applicable grievance process was received, a grievance may be referred to adjudication no later than 40 days after the expiry of the period within which the decision was required under this Part or, if there is another period set out in a collective agreement, under the collective agreement.

[Emphasis in the original]

[32] Section 10 of the *Regulations* states that if a time limit under the *Regulations* for filing a document expires on a Saturday or holiday, it may be filed on the day next following that is not a Saturday or a holiday.

[33] “Holiday” is not defined in the *Regulations* or the *Act*. It is defined in s. 35 of the *Interpretation Act* and includes Sunday.

[34] The grievor filed his grievance on March 16, 2012. No evidence or submission was made that it was filed at the first level in an untimely manner. As such, for the purpose of this objection, I assume that it was filed in time.

[35] The employer’s first-level response to the grievance was dated May 18, 2012 and was received by the grievor on May 25, 2012. Based on clause 20.11 of the collective agreement, the employer should have replied to the grievance at the first level within 10 days. As it had not responded within the 15-day time frame set out in clause 20.12, the grievor was within his rights to transmit the grievance to the second level of the procedure within 10 days of the 15th day after he filed his grievance, which he did, on April 2, 2012.

[36] Once the grievor had transmitted his grievance to the second level of the grievance procedure, as long as it was done before the expiry of the time for the employer to reply, the time at that level started to run, in this case, from April 2, 2012. Again, based on clause 20.11, the employer should have responded at the second level

of the procedure within 10 days. Clause 20.16 states that when calculating the time for doing something set out in article 20, Saturdays, Sundays, and holidays are not counted. Based on this, the employer should have delivered its second-level reply to the grievance by Wednesday, April 18, 2012.

[37] The employer again did not reply within the agreed time frame. As such, the grievor was within his rights to transmit the grievance to the final level, which he did, on November 2, 2012.

[38] The employer pointed out that the referral of the grievance to the final level on November 2, 2012, was out of time. Based on the wording of the collective agreement, the employer is correct. According to the collective agreement, once the grievance had been referred to the second level on April 2, 2012, the employer had 10 days to respond. As it did not, and as there is no evidence of and no suggestion in the parties' submissions that there was an agreement to extend the time for the employer's response under clause 20.17, the grievor should have referred the grievance to the final level within 10 days of the 15th day after he had transmitted his grievance to the second level (clause 20.12). That 15th day was Wednesday, April 25, 2012, and the 10th day after that was Wednesday, May 9, 2012. November 2, 2012, was clearly well past the time frame set out in article 20.

[39] However, the grievor's failure to transmit his grievance from the second to the final level within the required time frame is not fatal, unless at the final level the employer raised this timeliness objection.

[40] Once the grievor transmitted his grievance to the final level, albeit out of time, the employer was still bound to respond to it within the fixed time frame. If it wanted to object to it on the basis that it was out of time, it had to do it at the final level.

[41] The jurisprudence, as established by the Board's predecessors, has addressed this issue in *Lafrance*, *McWilliams*, and *Sidhu*. *Lafrance* held that s. 95 of the *Regulations* stands for the proposition that the employer may raise an objection about the failure to present or transmit a grievance within a time limit (as agreed in a collective agreement or under the *Regulations*) only if it was rejected for that reason at the first opportunity and at all subsequent levels of the applicable grievance procedure. *Sidhu* and *McWilliams* follow the reasoning in *Lafrance*.

[42] The most recent decision interpreting the issue of an objection to jurisdiction arising out of a failure to transmit a grievance within the time limits imposed by either the *Regulations* or a collective agreement is *Emard v. Treasury Board (Correctional Service of Canada)*, 2019 FPSLRB 66, which upholds the earlier jurisprudence.

[43] Based on the facts, the grievance was transmitted to the final level of the grievance procedure on or about November 2, 2012. While that was clearly not within the time limits established by the parties in the collective agreement, nonetheless, the employer should have replied to it within the appropriate time frame. In doing so, it should also have objected to the untimeliness of the transmittal from the second to the final level of the grievance procedure. Based on the wording of the collective agreement, the deadline for the employer's response would have been December 17, 2012.

[44] While the employer did eventually deliver a final-level grievance response in which it did raise the untimeliness of the transmittal of the grievance from the second to the third level, it did so only well after the time frame for a response at the final level had expired and the grievor had referred the grievance to the PSLRB for adjudication. In fact, the employer's final-level response was dated July 11, 2013, which was not only well past the time frame within which it should have delivered its response but also after the grievance had been referred to the PSLRB for adjudication and after the following had taken place:

- the employer had objected, on February 18, 2013, to the Board's jurisdiction to hear the grievance on the basis of the untimeliness of the grievor referring it to the PSLRB ;
- the bargaining agent, on behalf of the grievor, responded to that objection on February 23, 2013; and
- the employer replied to the bargaining agent's response on March 8, 2013.

[45] In *Lafrance*, at para. 23, the adjudicator held that the employer could raise at the adjudication level an objection to the time limit for the presentation of a grievance only if the grievance had been rejected at the first opportunity and at all subsequent levels of the applicable grievance procedure.

[46] The timelines set out in the collective agreement are simple and straightforward. It was incumbent on the employer to object to the untimeliness of the transmission of the grievance from the second to the final level in its response to the grievor within the prescribed timelines set out in the collective agreement and in the *Regulations*. The employer's failure to respond at a level of the grievance process is considered to be a decision rejecting the grievance (see *McWilliams*, at para. 22). Consequently, by not responding, the grievance was deemed to be rejected, without any objection to timeliness being made. The employer could not somehow retroactively cure this failure by delivering a final-level response more than eight months after it was due.

[47] As the employer is in breach of s. 63 of the *Regulations*, its objection to jurisdiction, based on the grievor's failure to transmit his grievance from the second to the final level of the grievance procedure within the timelines agreed to in the collective agreement, is dismissed.

[48] There remains the question of whether the referral to adjudication from the final level was made within the appropriate time frame and the grievor's submission that the employer's objection to jurisdiction was out of time.

[49] Clause 20.13 of the collective agreement provides that the employer shall deliver a final-level response within 30 days. The collective agreement is silent on the time frame within which a grievance may be referred to adjudication when no response is delivered. By default, under s. 90(2) of the *Regulations*, the grievor had 40 days after the date on which the employer was required to deliver its response. He referred his grievance from the final level to the PSLRB on January 4, 2013, which was well within the time frame set out in s. 90(2). Therefore the grievance was referred to adjudication within the prescribed time limit.

[50] The grievor submitted that the employer's objection concerning the referral to adjudication was not made within the time frame set out in s. 95 of the *Regulations*. The Board received the reference to adjudication on January 4, 2013 and its documentation disclosed that it was faxed to the parties on January 17, 2013, at 11:21 a.m.

[51] Section 95 of the *Regulations* provides that no later than 30 days after being provided with a copy of the notice of the reference of a grievance to adjudication,

a party may raise an objection to it on the grounds that the time prescribed in Part 2 of the Regulations or in a collective agreement for the presentation of a grievance at a level in the grievance procedure or for the referral of a grievance to adjudication has not been met.

[52] Thirty days from January 17, 2013, was Saturday, February 16, 2013. According to s. 10 of the *Regulations*, the last day on which the employer could have objected, to satisfy the deadline in s. 95 of the *Regulations*, would have been Monday, February 18, 2013. As the employer did file its objection on Monday, February 18, 2013, it was not in breach of s. 95 of the *Regulations*. Therefore, its objection was submitted on time.

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

(The Order appears on the next page)

V. Order

[54] The objections to jurisdiction based on timeliness are dismissed.

[55] The Board will hear the grievance at the scheduled hearing.

January 17, 2020.

**John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board**