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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

ROSE HALLERAN

Grievor

and

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

Employer

Indexed as

Halleran v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Nancy Rosenberg, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Kayla Minor

For the Employer: Anne-Renée Bergeron

Decided on the basis of written submissions,
filed February 3, 18, and 26, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Rose Halleran (“the grievor”) filed a grievance on March 24, 2015, in which she alleged that the Treasury Board (“the employer”) violated article 19 (the no-discrimination article) of the collective agreement between it and the Public Service Alliance of Canada for the Programs and Administrative Services Group that expired on June 20, 2014 (“the collective agreement”), as well as the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). The grievor alleges that the employer failed to appropriately accommodate her disability.

[2] The matter was referred to the Federal Public Sector Labour Relations and Employment Board (“the Board”) on December 12, 2019. The employer objects to the jurisdiction of the Board to hear this matter on the basis of timeliness. It alleges that the grievance is untimely because it was not referred from the second to the third level of the grievance procedure in a timely way, pursuant to clause 18.16(b) of the collective agreement.

II. Background

[3] The employer’s first-level response to the grievance was provided on May 4, 2015. The grievance was then held in abeyance at the grievor’s request until August 2017. The second-level grievance consultation was held on August 23, 2017. The employer’s second-level response is dated September 29, 2017. The grievor moved her grievance to the third level of the grievance procedure on December 21, 2017.

[4] Clause 18.17 of the collective agreement in place at the time stated, “*The Employer shall normally reply to a grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented ...*”.

[5] Clause 18.16 sets out the time limits to move a grievance to the next level as follows:

18.16 A grievor may present a grievance at each succeeding level in the grievance procedure beyond the first level either:

a. where the decision or settlement is not satisfactory to the grievor, within ten (10) days after that decision ... has been conveyed in writing to the grievor by the Employer,

or

b. where the Employer has not conveyed a decision to the grievor within the time prescribed in clause 18.17, within fifteen (15) days after presentation by the grievor of the grievance at the previous level.

[6] The employer states that as the second-level grievance consultation was held on August 23, 2017, it had until September 7, 2017, to provide a second-level response. However, it did not do so until September 29, 2017. The employer further submits that in the absence of a response from it by September 7, the grievor had until September 14, 2017, to move her grievance to the next level (15 days from the second-level presentation of the grievance). As she did not do so, the employer objected to the grievance on the basis of timeliness at the third level, as follows:

On a preliminary matter, I note that the transmittal of your grievance to the third level was untimely, pursuant to section 18.16(b) of the collective agreement. As such, your grievance is denied on that basis.

[7] The grievor submits that clause 18.16 provides two alternatives: a grievor may present a grievance at each succeeding level either a) within 10 days of a response from the employer; or b) in the absence of a response from the employer, within 15 days after the presentation of the grievance at the previous level.

[8] Rather than move the grievance to the third level as soon as she could, the grievor waited for the employer's response. The grievor alleges that it is common practice between the parties to wait for a response at each level of the grievance procedure before moving a grievance to the next level. The employer does not indicate otherwise.

[9] However, the employer stresses that because the grievor did not receive a timely response from it on September 7, she should have moved her grievance forward 15 days after the second-level grievance presentation, pursuant to clause 18.16(b) of the collective agreement.

III. Reasons

[10] I agree with the grievor that clause 18.16 provides two alternatives. Although the grievor could have moved her grievance forward on September 14 pursuant to clause 18.16(b), it was not mandatory that she do so. She was entitled to await the employer's (late) response. Once received, pursuant to clause 18.16(a), she then had 10 days to move it forward.

[11] I note the use of the words “either”, “or”, and “may” in the collective agreement clause. This language makes it clear that the grievor was not obligated to move the grievance forward immediately when the employer did not respond. When the employer did respond later, she had another opportunity to move it forward, within 10 of the employer’s response.

[12] Section 95 of the *Federal Public Sector Labour Relations and Employment Regulations* deals with raising timeliness objections as follows:

Deadline for raising objections

95 (1) *A party may, no later than 30 days after being provided with a copy of the notice of the reference to adjudication,*

a) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the presentation of a grievance at a level of the grievance process has not been met;

...

Objection may not be raised

(2) *The objection referred to in paragraph (1)(a) may be raised only if the grievance was rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.*

[13] The Board has held that an employer must object at its first opportunity to a grievor’s failure to move a grievance forward within the specified time limits. The employer cannot proceed with the process and object only after the fact, for example, when the grievance is referred to adjudication at the Board. The Board restated this principle recently in *Pannu v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLRB 4.

[14] The Board in that case described similar collective agreement language setting out a procedure for moving grievances forward. However, unlike this case, in which the employer responded, albeit late, the employer in *Pannu* did not respond to the grievance at all. Having received no response from the employer, the grievor in *Pannu* moved his grievance to the next level, which he was entitled to do. But he did not do so within the time specified by the relevant clause; rather, he did it about six months later.

[15] The Board found as follows:

...

[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 FPSLREB 66, which upholds the earlier jurisprudence.

...

[16] The employer's objection to the untimely transmittal of the grievance was clearly based on clause 18.16(b) of the collective agreement, that is, that the grievor, having received no response by the employer's response deadline, did not move her grievance forward within 15 days of the second level grievance presentation. However, as indicated earlier, that was not the grievor's deadline.

[17] Once the employer provided its response to the grievance at the second level, clause 18.16(a) became the applicable timeline to be met. The employer cannot rely on clause 18.16(b) to make its timeliness objection - the language of the clause simply does not bear the employer's interpretation.

[18] The employer did not object to the timeliness of the grievance pursuant to clause 18.16(a). Its objection is pursuant to clause 18.16(b). Accordingly, I find that the employer's objection to the Board's jurisdiction cannot stand.

IV. Order

[19] The employer's objection is dismissed.

June 15, 2020.

**Nancy Rosenberg,
a panel of the Federal Public Sector
Labour Relations and Employment Board**