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Files: 566-02-41224 and 41303

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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

MARC LEFEBVRE

Grievor

and

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

Employer

Indexed as

LeFebvre v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

Before: Nathalie Daigle, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: François Ouellette, counsel

For the Employer: Valerie Taitt and Dominique Goulet, Treasury Board of Canada
Secretariat

Decided on the basis of written submissions,
filed January 13 and 28 and February 4 and 21, 2020.

(FPSLREB Translation)

I. Issue before the Board

[1] Marc LeFebvre (“the grievor”) referred two grievances to adjudication. The employer objected that the grievances were untimely.

[2] For the following reasons, I find that the employer is not entitled to raise an objection to the timeliness of the grievances at the first level of the grievance procedure as the grievances were not denied on this ground at all levels of the grievance process.

II. Background**A. File 566-02-41303**

[3] On June 19, 2019, the grievor filed his first grievance with the employer (file number 566-02-41303). His bargaining agent at that time was the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (“the union”). The grievance read as follows:

[Translation]

...

In the context of my job as a correctional officer for the CSC (the UCCO union), I took paternity leave from July 3 to August 6, 2015.

When I approached regional compensation advisors to advise them of this leave, they informed me that I could not benefit from the paternal allowance payment at 93% of my weekly pay rate at the time (less any amounts covered by the QPIP) because my partner worked for the CSC. Then they informed me that the CSC grants the allowance at 93% of the salary to just one of the two CSC employees. Consequently, I received no allowance from the CSC for the relevant period, only the QPIP.

Yet on June 11, 2019, they informed me that the decision was based only on the compensation advisor's misinterpretation and that I should have had equal access to 93% of my weekly pay rate at the time (less any amounts covered by the QPIP), as stated in the collective agreement.

...

[4] The employer dismissed the grievance at the first level of the grievance process and advised the grievor of its decision on July 25, 2019. It noted that “[translation]

your grievance was filed after the time limits prescribed in clause 18.15 of the collective agreement ... ". Nevertheless, it dismissed the grievance on its merits.

[5] The employer also dismissed the grievance at the second level of the grievance process and advised the grievor of its decision on September 9, 2019. Once again, the employer noted that "[translation] your grievance was filed after the prescribed time limits ... ". Nevertheless, it dismissed the grievance on its merits.

[6] The grievor presented his grievance at the final level of the grievance process. As he did not receive a decision from the employer at that level within the prescribed time limits, on December 10, 2019, he referred his grievance to adjudication under s. 209(2) of the *Federal Public Sector Labour Relations Act* ("the Act"). The employer was notified of the referral on December 19, 2019.

[7] On January 14, 2020, the employer "[translation] made a decision" at the final level of the grievance process. It dismissed the grievance solely on the grounds that "[translation] the grievance was filed after the time limit prescribed in clause 20.11 of the collective agreement ...".

[8] On February 4, 2020, the employer advised the Federal Public Sector Labour Relations and Employment Board ("the Board") that it would make an objection on the grounds that the grievance was untimely. I note that this objection was also untimely, according to the *Federal Public Sector Labour Relations Regulations* ("the Regulations"), because it was filed 31 days after the employer was notified of the referral to adjudication. Specifically, it was filed after 4:00 p.m. on the 30th day, as extended by order of the chairperson during the 2019-2020 holiday period. At that time, s. 9(1) of the *Regulations* provided that "... if a document is received by the Board after 4:00 p.m. Ottawa local time, the date of receipt of the document is deemed to be the next day that is not a Saturday or a holiday."

[9] On February 20, 2020, the grievor made his response to the employer's objection with the Board; he did not object that the objection was untimely.

B. File 566-02-41224

[10] On June 26, 2019, the grievor filed another grievance with the employer (file number 566-02-41224). At that time, his bargaining agent was the Public Service Alliance of Canada ("the Alliance"). His grievance stated as follows:

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

[Translation]

I am filing a grievance because, due to the erroneous compensation information I received, I could not fully benefit from the parental allowance as indicated in clause 43.02, Parental allowance, SV table [in the Operational Services (SV) collective agreement], for August 3 to September 6, 2014, AND in clause 39.02, SV Table, for July 31, 2011, to September 3, 2011, and July 29, 2012, to September 1, 2012.

[11] The employer dismissed the grievance at the first level of the grievance process and advised the grievor of its decision on July 25, 2019. It noted that “[translation] your grievance was filed after the time limits prescribed in clause 18.15 of the collective agreement ...”. Nevertheless, it dismissed the grievance on its merits.

[12] The employer also dismissed the grievance at the second level of the grievance process and advised the grievor of its decision on September 9, 2019. While the employer noted that “[translation] your grievance was filed after the prescribed time limits ...”, it is unclear if it dismissed the grievance for that reason.

[13] The grievor presented his grievance at the final level of the grievance process. Since he did not receive a decision from the employer at that level within the prescribed time limits, he referred his grievance to adjudication on November 19, 2019, under s. 209(2) of the *Act*. The employer was notified of the referral on November 27, 2019.

[14] On December 20, 2019, the employer “[translation] made a decision” at the final level of the grievance process, in which it dismissed the grievance solely on the grounds that “[translation] the grievance was filed after the time limit provided in clause 18.15 of the collective agreement ...”.

[15] On January 13, 2020, the employer advised the Board that it would make an objection on the grounds that the grievance was untimely. On January 27, 2020, the grievor sent the Board his comments in reply to the employer’s objection.

C. Written submissions

[16] On May 13, 2020, the parties were informed that the issue of timeliness of the grievances at the first level of the grievance process would be dealt with as a preliminary matter. After receiving the grievor’s responses to the employer’s objections on January 28 and February 21, 2020, the Board asked the employer to

reply, if applicable, by June 1, 2020. The grievor was also asked to respond to that reply, if applicable, by June 8, 2020.

[17] As of June 1, 2020, the Board had received no reply from the employer. As a result, the employee was not required to respond.

III. Issue: Could the employer object on the grounds that the grievances were filed late at the first level of the grievance process?

[18] The employer argued that the grievance in file 566-02-41224 was untimely because it was filed after the prescribed period for filing a grievance at the first level. It claimed that the collective agreement between the Treasury Board and the Alliance for the Operational Services Group (SV) that expired on June 20, 2014, stated in part in clause 18.15 the following:

A grievor may present a grievance to the first level of the procedure in the manner prescribed in clause 18.08 not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance....

[19] The employer argued that the grievance in file 566-02-41303 was also untimely as it was filed at the first level after the prescribed time limit. It added that the collective agreement between the Treasury Board and the union stated the following at clause 20.11:

20.11 A grievance may be presented at the First (1st) Level of the procedure in the manner prescribed in clause 20.07 no 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] These clauses establish the time limit for filing a grievance at the first level of the grievance process. They provide that at that level, a grievance may be filed no later than the 25th day after the date on which the grievor is notified orally or in writing or first becomes aware of the action or circumstances giving rise to the grievance.

[21] Consequently, the employer alleged that the grievor was obliged to initially file his grievances no later than 25 days after becoming aware of the event or of any other issue that gave rise to the grievances or after the date on which he was advised of it, whichever occurred first.

[22] In its objection, the employer argued that the grievances were filed after that time limit expired. It summarized its position as follows:

[Translation]

[File number 566-02-41224 (submissions dated January 13, 2020):]

...

No explanation was provided for the delay between the complainant's parental leave and the submission of his grievance. The dates of those leave periods, which gave rise to the grievance, far exceeded the time limits prescribed in clause 18.15 of the applicable collective agreement.

In light of that, the employer respectfully asks the Public Service Labour Relations and Employment Board [sic] to dismiss the grievance for non-compliance with the time limit as previously shown. If that order cannot be obtained, the employer stresses that it intends to raise its objection again at a future hearing.

...

[File number 566-02-41303 (submissions dated February 3, 2020):]

...

The employer respectfully submits that it has not received any information from the union or the employee about the moment he reportedly became aware of the circumstances giving rise to the grievance. Thus, with no notification to the contrary, the employer's view is that the grievance is untimely because it was allegedly submitted several years after the parental leave. Therefore, the employer respectfully asks the Public Service Labour Relations and Employment Board [sic] to dismiss the grievance for non-compliance with the described time limit.

...

[23] According to the employer, no justification was provided to justify the delay between the grievor's parental leave and his grievances being filed at the first level of the grievance process.

[24] In his January 27, 2020, submissions, the grievor argued that both grievances were filed at the first level of the grievance process in the days after he "[translation] **became aware** of his cause of action" [emphasis in the original]. He also asked the Board "[translation] to follow the line of cases established by the Board" that dealt with s. 95 of the *Regulations*, and he added the following:

[Translation]

...

All these decisions [Lafrance v. Treasury Board (Statistics Canada), 2006 PSLRB 56; Sidhu v. Treasury Board (Correctional Service of Canada), 2007 PSLRB 76; McWilliams et al. v. Treasury Board (Correctional Service of Canada), 2007 PSLRB 58; and Pannu v. Treasury Board (Correctional Service of Canada), 2020 FPSLRB 4] agree: under s. 95 ... the employer can raise an objection at the adjudication stage to the delay presenting a grievance only if it was dismissed for that reason at the first opportunity and at all subsequent levels of the applicable grievance process. In addition, any such objection must be raised within 30 days of the employer's receipt of the notice of referral of the grievance to adjudication.

[Emphasis in the original]

[25] However, the grievor did not object that that objection was filed with the Board after 4:00 p.m. on the 30th day after the employer received the notice of referral to adjudication for the grievance in file 566-02-41303.

[26] In his February 20, 2020, submissions, the grievor added that he did not understand why the employer felt that it had received no information from him about the moment that he became aware of the circumstances that gave rise to the grievance. He said that that information appeared in very clear terms in his grievance. He reiterated that the grievance stated the following:

[Translation]

When I approached regional compensation advisors to advise them of this leave, they informed me that I could not benefit from the paternal allowance payment of 93% of my weekly pay rate ... because my partner worked for the CSC

Yet on June 11, 2019, they informed me that that decision was based only on the compensation advisor's misinterpretation and that I should have had equal access to 93% of my weekly pay rate

[27] Irrespective of whether the grievor filed his grievances at the first level of the grievance process within the prescribed time limits, or even assuming that they were filed late, did the employer have the right to object to timeliness after they were referred to adjudication?

[28] According to s. 63 of the *Regulations*, a grievance can be dismissed only if it was filed at a lower level of the grievance process, after the expiry of the prescribed time limit, if it was dismissed at that level for the same reason. This point is mentioned again in s. 95(2), which states that an objection to not respecting the time limit for

filing a grievance may be raised only within 30 days of it being referred to adjudication, if the grievance was dismissed at the level at which the time limit was not met and at all subsequent grievance process levels for that reason.

[29] Did the employer dismiss the grievances for that reason at all levels of the grievance process before they were referred to adjudication?

[30] For both grievances, the employer noted at the first level of the grievance process that “[translation] your grievance was filed after the time limits prescribed in clause 18.15 of the collective agreement ...”, but that the grievances were not dismissed for that reason.

[31] At the second level of the grievance process, the employer again noted that the grievance in file 566-02-41303 “[translation] was filed after the time limits prescribed in clause 18.15 of the collective agreement ...”, but it was not dismissed for that reason. It is not clear if the employer dismissed the grievance in file 566-02-41224 for the same reason.

[32] In any case, as of the dates that the two grievances were referred to adjudication, the employer had not made a decision about them at the final level of the grievance process within the set time limit. Because failing to make a decision within the required period means a dismissal without grounds, the employer did not dismiss the grievances at that level because they had been filed late at the first level. Therefore, the requirements of s. 63 of the *Regulations* were not met.

[33] Specifically, s. 90(2) of the *Regulations* provides that if the employer did not render a decision at the final level of the grievance process within the prescribed period, the grievance may be referred to adjudication. Since the grievor did not receive a decision from the employer at the final level, he referred his grievances to adjudication on November 19, 2019 (the date on which the Board received the referral of the grievance in file 566-02-41224), and on December 10, 2019 (the date on which the Board received the referral of the grievance in file 566-02-41303).

[34] Ultimately, on December 20, 2019, the employer “[translation] made a decision” at the final level of the grievance process for the first grievance (in file 566-02-41224) and on January 14, 2020, for the second grievance (in file 566-02-41303). In both “decisions”, it dismissed the grievances on the grounds that they had not been filed

within the time limit provided by the applicable collective agreement and that consequently, they were untimely.

[35] For the grievance in file 566-02-41224, the employer also objected that the Alliance, that is, the bargaining agent that supported filing the grievance, did not approve filing at later levels or the referral to adjudication. Therefore, the employer's view is that in accordance with s. 213 of the *Act*, because the grievance relates to the application of the collective agreement that covers the Operational Services Group bargaining unit, the grievor did not have the right to refer the grievance to adjudication unless he obtained the approval of, and was represented by, the Alliance. This issue is to be dealt with on its merits at the hearing.

[36] As mentioned, the employer did not make a decision at the final level of the grievance process before the grievances were referred to adjudication. The employer's "decisions" at that level were made only after they were referred to adjudication.

[37] Section 72 of the *Regulations* establishes the time limits for responding to grievances at each level of the grievance process as follows:

72 (1) Unless the individual grievance relates to classification, the person whose decision constitutes the appropriate level of the individual grievance process must provide the decision to the grievor or the grievor's representative, if any, no later than 20 days after the day on which the individual grievance was received by the grievor's immediate supervisor or the grievor's local officer-in-charge identified under subsection 65(1).

(2) If the individual grievance relates to classification, the deadline is 80 days.

[38] As indicated in that section, the employer had to make a decision on the grievances at the final level of the grievance process within 20 days of them being filed at that level. Yet, in the context of the grievance process, a failure to make a decision within the applicable deadline is interpreted as a decision to dismiss the grievance (see *McWilliams v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 58 at paras. 22 and 23, and *Pannu v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLRB 4 at para. 46). A dismissal in the form of a "non reply", as described in *McWilliams*, means that the employer dismissed the grievances without grounds. In other words, the employer did not dismiss the grievances at the final level on the grounds that they were untimely at the first level.

[39] In summary, as for the two grievances, the employer did not dismiss them at the first level of the grievance process because they were untimely at that level. In addition, s. 63 of the *Regulations* prohibited it from dismissing them for that reason at the second and final levels. Finally, its failure to decide the grievances within the applicable deadlines at the final level represented a dismissal of them without grounds.

[40] I note that it does not matter if the employer's "decisions" at the final level of the grievance process, approximately one month after both grievances were referred to adjudication, i.e., December 20, 2019, for the grievance in file 566-02-41224, and January 14, 2020, for the grievance in file 566-02-41303, claimed to dismiss them because they were filed late at the first level. Those decisions are null and void since, in addition to not meeting the requirements of s. 63 of the *Regulations*, the employer's failure to make decisions at that level by the required deadlines represented a dismissal of the grievances without grounds. The employer should have been aware of the lack of legal effect of its alleged "decisions" as this is not the first time that the Correctional Service of Canada has experienced similar difficulties (see *McWilliams*). Therefore, through a unilateral act that did not comply with either the letter or the spirit of the *Regulations*, the employer could not cause the grievor to lose the right to have his grievances adjudicated.

[41] In addition, section 95(2) of the *Regulations* is clear that the employer must have dismissed the grievances at all levels of the grievance process for not complying with the filing time limits at the first level to have the right to object to their adjudication. Since it did not dismiss the grievances for that reason at all levels, it could not raise the objection (see *McWilliams*, at para. 24).

[42] Therefore, I find that the employer failed to dismiss the grievances for untimeliness at all levels and that it could not raise an objection in that respect at adjudication.

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

(The Order appears on the next page)

IV. Order

[44] I declare that the decisions made at the first level of the grievance process on December 20, 2019, for the grievance in file 566-02-41224, and on January 14, 2020, for the grievance in file 566-02-41303, are null and void.

[45] I declare that the employer does not have the right to object to grievance filing deadlines at the first level of the grievance process.

[46] I dismiss the employer's objection.

September 10, 2020.

FPSLREB Translation

**Nathalie Daigle,
a panel of the Federal Public Sector
Labour Relations and Employment Board**