Date: 20210914

Files: 566-02-14180 and
568-02-00240

Citation: 2021 FPSLREB 104

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

JEFFREY REID

Grievor

and

DEPUTY HEAD
(Library and Archives of Canada)

Respondent

Indexed as
Reid v. Deputy Head (Library and Archives of Canada)

In the matter of an individual grievance referred to adjudication and an application for an extension of time referred to in paragraph 61(b) of the *Federal Public Sector Labour Relations Regulations*".

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

For the Grievor: Himself

For the Respondent: Amanda Bergmann, counsel

Heard via videoconference,
June 16, 2021.

REASONS FOR DECISION

I. Motion to set aside settlement agreement

[1] Jeffrey Reid brings a motion to set aside a settlement agreement that dealt with his grievance challenging his termination of employment. He claims the agreement should be set aside because he lacked the capacity to enter into it. With the settlement agreement set aside, he then wants his termination grievance to be heard by a panel of the Federal Public Sector Labour Relations and Employment Board (the Board).

[2] Mr. Reid did not attend the hearing of his motion and thus did not present evidence in support of his position. The other party did attend, and the evidence they presented establishes that there is a final and binding settlement of the termination grievance. The settlement agreement shall not be overturned. For the reasons that follow, Mr. Reid's motion to set aside the settlement agreement is dismissed and the grievance files are closed.

II. Chronology of events giving rise to the motion and the hearing

[3] Mr. Reid was a circulation clerk at the Federal Records Centre in Renfrew, Ontario, a branch of Library and Archives Canada (LAC or "the employer"). On July 7, 2010, the employer issued him a letter of termination. The letter reads, in part, as follows:

> …
>
> *The purpose of this letter is to inform you of the decision to terminate your employment in accordance with section 12(1)(e) of the* Financial Administration Act.
>
> *This decision is based on the fact that you have been absent from work without authorization since January 13, 2010, you have not provided the requested documentation and you have failed to communicate with your manager or supervisor.*
>
> …

[4] Mr. Reid submitted a termination grievance on June 6, 2011. It was denied on the basis that it was not presented within the time limits specified in the collective agreement.

[5] Mr. Reid then filed an application for an extension of the time limits within which a grievance could be filed. This application was scheduled to be heard before the Board on April 7, 8, and 9, 2015, in Ottawa, Ontario.

[6] Mr. Reid was unrepresented until March 27, 2015. His counsel requested an adjournment since the hearing was to take place in only one week. An adjournment was granted.

[7] On the parties' consent, a new hearing date was chosen, and the application for an extension of time was scheduled to be heard on December 7 and 8, 2015, in Ottawa.

[8] On December 4, 2015, the parties indicated their involvement in settlement discussions and jointly requested that the matter be postponed, to permit continued discussions. This joint request was granted following a teleconference with the Board on December 8, 2015.

[9] During the teleconference, it was also agreed that, in the event that the parties were unable to reach a settlement agreement, the grievor's representative would refer Mr. Reid's termination grievance to adjudication and, upon receipt of the referral, the Board would consolidate both the grievance and the application for an extension of time so the matters could be heard together.

[10] Mr. Reid's termination grievance was not referred to adjudication until May 19, 2017.

[11] 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 *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

[12] The hearing was scheduled for November 21 to 24, 2017, inclusive, in Ottawa, Ontario.

[13] On October 26, 2017, the parties advised the Board that they were actively working on a settlement and indicated that they would advise the Board immediately should a settlement be reached before the November hearing dates.

[14] The hearing opened on November 21, 2017. Mr. Reid was not present but was represented by counsel. At the parties' request, an adjournment was granted to continue settlement discussions.

[15] On November 22, 2017, at 10:28, the Board was advised that "… [t]he parties are attempting to finalize a memorandum of settlement on this matter." The matter was adjourned for the day to permit the settlement discussions to continue.

[16] At the parties' request, the adjournment continued throughout the following day, November 23, 2017.

[17] At 12:44 on November 24, 2017, the Board received the following: "We write to confirm that the parties have reached a settlement in the above-noted matters. The Bargaining Agent will write to withdraw the grievances once the terms in the settlement agreement have been satisfied."

[18] The Board acknowledged this confirmation of settlement and instructed counsel to "… inform the Board when the terms of the settlement have been finalized and to withdraw the application for extension of time and the grievance at that time in order that we may close the files."

[19] On December 7, 2017, the adjudicator appointed to hear the matter requested that the following note be placed on file:

> …
>
> *At the commencement of the hearing on November 21, 2017, the parties asked for a day's adjournment for settlement discussions. They explained that they had an agreement in principle and were working on the details. The employer counsel emphasized that she was agreeing to an adjournment of one day, not a postponement. She stated that if the parties did not succeed in finalizing and signing a memorandum of settlement, her witnesses were available and she was prepared to continue with the hearing.*
>
> *At the end of the day, the parties requested that the matter be adjourned for another day.*
>
> *The hearing reconvened on November 23. The grievor's counsel advised the Board that a settlement had been reached, but he was*

> *unable to contact his client to finalize and sign it. He asked the Board to postpone the hearing. Employer counsel's position was that as the memorandum of settlement was not concluded, the hearing should continue. The matter had already been postponed on different occasions. Further delays would prejudice the employer. The Board decided that the matter would continue with the testimony of the employer's witnesses. The circumstances of the case dated back 7 ½ to 8 years, and in that time there had been other postponements and other attempts to settle.*
>
> *The employer opened its case. The Board heard the testimony of [D.C.] (name omitted), former Archivist and Librarian of Canada. It also heard the partial testimony of [M.C.] (name omitted) who was in charge of the section in which the grievor worked at the time the situation giving rise to the grievance occurred.*
>
> *On November 24, 2017, the grievor's counsel advised the Board that he had met with the grievor, and the memorandum of settlement was finalized and signed. The parties undertook to advise the Registrar of developments.*

[20] On January 30, 2018, Mr. Reid wrote to the Board, expressing a desire to vitiate the settlement agreement because it "… was not signed while I was with medical, legal / contractual capacity sufficient to be liable for the full content of the MOS [memorandum of settlement], that is, there was duress and a lack of medical competency as described above." He referred to an attachment from his doctor but nothing was attached.

[21] On February 12, 2018, the Board attempted to convene a teleconference to discuss these developments. The parties were unable to secure mutually agreeable dates of availability until April 12, 2018. Nothing on file indicates whether a teleconference took place on that date.

[22] On April 13, 2018, the Board's case management officer sent the following to Mr. Reid:

> *Good morning Mr. Reid,*
>
> *This is to acknowledge receipt on January 30, 2018, of your email related to the above-noted matters. It is noted that although it had been indicated in your correspondence that there was an attachment, the Board did not receive it.*
>
> *Your correspondence was submitted to the panel of the Board, and I was directed to request you to provide, **by no later than May 4, 2018**, the information and documents that support your claim of duress and medical incompetency.*

> *And further take notice that if you fail to respond by the above-mentioned date, the Board will make a decision on the basis of the information currently on the file.*
>
> *Furthermore, please advise the Board of the Power of Attorney's name, email address, telephone and fax numbers so that any relevant documentation can be properly forwarded.*
>
> …
>
> [Emphasis in the original]

[23] On May 4, 2018, Mr. Reid responded with a very lengthy (three pages, single-spaced) letter containing, among many other things, complaints about the lawyer who represented him on November 24, 2017, his many complaints about LAC, and a message dated January 24, 2018, from his family doctor, Dr. John Kindle, which reads as follows:

> *Mr. Jeff Reid has been a patient of mine for many years. He has had some ongoing medical problems which have been both physical and mental over several years. I know that for some time he had been preparing to attend the hearing of the Public Service Labour Relations Board to look into his case and this was scheduled in November 2017. Unfortunately, he had a situational crisis that incapacitated him to the point where he was unable to attend this meeting. I have been seeing him on a regular basis with his last visit being January 18, 2018. I feel that his medical condition has improved significantly and he is currently able to attend a meeting to discuss his case with the Board if required.*
>
> …

[24] On May 25, 2018, the parties were advised as follows: "A Hearing will be scheduled to deal with the following questions: Did Mr. Reid sign the MOS [memorandum of settlement] under duress? Was Mr. Reid medically incompetent at the time he signed the MOS [memorandum of settlement]?" The Board directed the parties to indicate their availability dates for a teleconference.

[25] On May 29, 2018, counsel for Mr. Reid wrote the Board, stating, "We request a two-week extension to consult with our client on this matter before setting a teleconference. In light of the allegations being made by Mr. Reid, new counsel may need to be retained to address these issues."

[26] On June 6, 2018, counsel for Mr. Reid next proposed that "… we put the matter on hold to provide the parties with an opportunity to better understand what he is looking for in this matter."

[27] On June 8, 2018, the employer wrote to the Board, as follows:

> …
>
> *It is the position of the employer that there is no basis to depart from the principle of finality when it comes to settlement agreements. There is no dispute that there was a settlement agreement. There is no dispute that it was executed. Finally, there is no dispute that the grievor was represented by some of the most experienced labour law counsel in the business.*
>
> *Forcing the employer into subsequent hearings sends a chill and is counter-productive to the settlement process.*
>
> *The employer asks that the request to re-open this matter be dismissed.*
>
> …

[28] On June 11, 2018, the parties were directed to provide a status update of the situation by no later than July 12, 2018.

[29] On July 12, 2018, counsel for Mr. Reid requested an extension until the end of August 2018 to "work through these issues" with him. The employer did not oppose this request. The Board directed the parties to provide an update by August 31, 2018.

[30] On August 29, 2018, counsel for Mr. Reid advised, "We were recently able to speak with Mr. Reid by phone for the first time since these matters have been raised and request an additional extension of time to respond to the Board regarding next steps. We propose to update the Board at the end of October." The Board directed that an update be provided by October 31, 2018.

[31] On October 31, 2018, counsel for Mr. Reid wrote this to the Board: "In light of recent correspondence from Mr. Reid, we request an additional three weeks in which to propose next steps in this matter." The Board then directed that a status update be provided by no later than November 30, 2018.

[32] On November 30, 2018, counsel for Mr. Reid wrote to the Board, as follows:

> …
>
> *We write to update the Board on the above matter.*
>
> *Given the time that has passed since Mr. Reid first raised his concerns regarding the November 2017 settlement agreement, PSAC* [Public Service Alliance of Canada] *proposes that the Board provide him with a reasonable opportunity to provide any further*

> *medical evidence or reports that support his position that he lacked legal capacity to enter into that agreement. This will provide the parties and the Board with the information necessary to determine how to best move forward with this matter.*
>
> …

[33] Mr. Reid provided a lengthy message of his own dated December 3, 2018. Among many other things, he stated this:

> …
>
> *It is my opinion that if you, the board, decide that after 20 years of accumulated issues combined with serious social and medical issues flaring up November 24,2017 that I have no right to be heard in this matter it would be a travesty of justice and not in compliance with my charter of rights and freedoms which includes Human Rights influencing the labor law that may preclude me from ever being heard in all of these matters to date.*
>
> …

[34] The Board acknowledged receipt of both Mr. Reid's and his counsel's messages on December 4, 2018. The Board set a deadline of April 4, 2019, "… to provide any medical documentation proving that he was medically incompetent at the time he signed the memorandum of settlement."

[35] On April 4, 2019, Mr. Reid faxed the Board. It was accompanied by a copy of a letter he had received from Dr. Kindle dated March 29, 2019, which concluded as follows:

> …
>
> *In summary, you have my support that you were not mentally well enough to make the decisions requested by The Board on November 24, 2017.*
>
> *I make these statements being a Family Doctor who has been practicing medicine in Ottawa for the past 45 years. Should more information be required I would be pleased to speak with a representative of The Board.*
>
> …

[36] Mr. Reid's correspondence dated April 4, 2019, did not appear to have been shared with the employer. It was then shared, and a reply was requested by June 11, 2019.

[37] The employer requested a two-week extension to review the documents submitted by Mr. Reid. At the same time, counsel for Mr. Reid also requested an extension of time. The Board gave the parties a deadline of June 25, 2019, to respond.

[38] On June 25, 2019, the employer responded, contesting Mr. Reid's declaration that he was not medically competent to sign the memorandum of settlement on or around November 24, 2017. The employer requested that the matter be scheduled for an oral hearing in Ottawa and asked for the disclosure of Mr. Reid's medical record.

[39] On June 25, 2019, counsel for Mr. Reid advised the Board that he was "… expecting instructions on this issue before the end of the week and [would] provide a response as soon as possible."

[40] On July 10, 2019, counsel for Mr. Reid advised that the Public Service Alliance of Canada was no longer representing him. From this point on, Mr. Reid represented himself.

[41] The Board scheduled a case management conference for September 4, 2019.

[42] At the conference, Mr. Reid confirmed that he wished to set aside the memorandum of settlement for reasons of medical incompetency. He was reminded of his obligation to disclose his medical file. He acknowledged his obligation in correspondence to the Board, dated September 13, 2019.

[43] On September 27, 2019, in a message to the parties entitled, "Medical Records Order from the Board", the parties were advised that a hearing was scheduled for March 23 to 27, 2020, in Ottawa, Ontario. The message went on to state this:

> …
>
> *… The hearing will be held solely on the question of whether or not the grievor was medically competent to sign the memorandum of settlement regarding the termination grievance against the employer.*
>
> *Please note that the above-noted dates are considered "**final**"*
>
> *A Notice of Hearing will be sent to both parties approximately one month prior to the scheduled hearing.*
>
> *Furthermore, the Board orders the grievor to produce to the respondent his complete medical file in the possession of Doctor John Kindle.*
>
> …

[Emphasis in the original]

[44] A pre-hearing teleconference was held on October 2, 2019, at which the Board reminded Mr. Reid of his obligation to disclose his medical file.

[45] On February 18, 2020, counsel for the employer wrote the Board, stating as follows:

> *The employer notes that the grievor has not yet produced for the respondent his complete medical file in the possession of Doctor John Kindle, as was ordered by the Board in both the above-mentioned email and at the pre-hearing conference.*
>
> *I write to ask for direction from the Board in light of the fact that (i) the employer has not yet received the above-mentioned medical disclosure from the grievor, as was ordered by the Board on September 27 and October 2, 2019; and (ii) the hearing is fast approaching (scheduled for March 23-27, 2020 in Ottawa, ON).*

[46] Mr. Reid sent an email dated February 18, 2020, in which he stated this:

> *I am sorry but to date my medical file is not complete with my Doctor John Kindle.*
>
> *PSAC has not supplied my complete file to me and I'm having difficulty sourcing my whole file and also getting representation now in a timely manner.*
>
> *Should you be in agreement would it be possible to please move a motion that would allow me time to get representation and my complete medical file of my Dr. John Kindle and therefore to Treasury Board?*
>
> *If you're in agreement I would like to put this matter in abeyance or on hold for a later date this year until such time as I can fulfill the board's request and I can gain representation to go before the board with this issue.*

[47] The Board did not respond to Mr. Reid's request, but in any case, on March 15, 2020, the COVID-19 pandemic forced the postponement of all in-person hearings, including his, for health reasons.

[48] With respect to this case in particular, the Board sent an additional message on March 24, 2020, advising of the need to postpone the hearing.

[49] There was no further contact with the parties until October 28, 2020, when the Board sent a request seeking dates for a pre-hearing teleconference. Seven different

dates were offered. The employer signalled its availability. Mr. Reid said that he was not available on any of the seven dates. He did not propose alternative dates or provide a reason for his unavailability.

[50] On November 2, 2020, the Board again contacted the parties, seeking dates for a pre-hearing teleconference. This time, there were 11 to choose from. The employer once again signalled its availability. Mr. Reid, once again, said that he was not available on any of the 11 dates and once again did not suggest alternate dates or provide an explanation as to why he was not available.

[51] On November 5, 2020, the Board sent a third solicitation about dates for a pre-hearing teleconference. This message included a request for an update on the status of Mr. Reid's disclosure of his medical file. This time, 10 dates were offered. Again, the employer signalled its availability. It added that the medical file had still not been disclosed. Again, Mr. Reid said that he was not available and did not provide an explanation or alternate dates. He did not mention the medical file in his message.

[52] On November 17, 2020, the Board sent the following message to the parties:

> *Since Mr. Reid has declined, without explanation, every date that has been offered thus far for a pre-hearing case management conference, I will not hold one. Rather, I will ask the Registry Office to set the first available date in April 2021 for a hearing into Mr. Reid's capacity to enter into his settlement agreement.*
>
> *Mr. Reid has been under an obligation, since September of 2019, to produce Dr. Kindle's medical file. The employer, having opposed the motion to set aside the settlement agreement, needs disclosure of this information in order to prepare its case. I will give Mr. Reid until* ***February 1, 2021*** *to disclose this information. Disclosure must be made sufficiently in advance of the hearing to permit the other party to analyze it and prepare accordingly.*
>
> *The hearing will be conducted by videoconference using the Zoom platform. The parties must make themselves available for a test session approximately one month before the hearing date to ensure the parties and witnesses, if any, are able to establish a satisfactory Zoom connection.*
>
> *If the parties wish to summon witnesses please advise the Registry Officer well in advance for preparation of the summons.*
>
> [Emphasis in the original]

[53] Nothing was heard from the parties until January 18, 2021, when Mr. Reid wrote to the Board, as follows:

> *Good morning.*
>
> *Due to irregularities in my medical and legal issues could you please provide more time for me to address this request?*
>
> *Unfortunately, I received erroneous misinformation so I remain without legal representation.*
>
> *Also my doctor has moved to further delay me addressing these issues.*
>
> *Since covid [sic] 19 slows normal fulfillment in the above issues I'm asking for a few months' time to reengage regarding necessary issues.*
>
> *Thank you for your patience in these matters.*
>
> …

[54] The Board sought clarification from Mr. Reid about the nature of the extension of time being requested. He was asked to document the efforts he had made to satisfy his obligation to disclose his medical file.

[55] The employer opposed Mr. Reid's request for an extension of time, noting that he brought this matter forward on January 30, 2018, that he had been specifically ordered to disclose his medical file on September 27, 2019, and that he had not demonstrated diligence in satisfying his obligation.

[56] In response, Mr. Reid indicated that "At this time I would agree with a reasonable time period for my friends to prepare for a trial" and provided a copy of the Board's policy on the provision of documents.

[57] On January 25, 2021, at 16:42, the Board sent the following message to the parties:

> *I am pleased to see Mr. Reid is familiar with the Board's policy regarding the provision of documents, having supplied a copy of it in his correspondence dated January 22, 2021. I am also pleased to see that he acknowledges the need for sufficient time to prepare for a hearing.*
>
> *What he did not provide is the doctor's report itself, which he was ordered to disclose in September of 2019. Over a year after that order was provided, this report had still not been disclosed, and no explanation provided as to why not. In November of 2020, therefore, I gave him another three months, and ordered disclosure to take place before February 1, 2021. This date was chosen because the Board's Registry was unable to provide a hearing date earlier than late March or early April of 2021.*

> *I will repeat, it is imperative that the employer be provided with an opportunity to review the medical report in sufficient time before the hearing (which has now been scheduled for April 6, 2021) to permit a meaningful response to it.*
>
> *It is now January 25, 2021, one week before the February 1, 2021, deadline, and Mr. Reid has still not provided a copy of the medical report. Nor has he provided a meaningful explanation as to why he has not met this obligation, hinting only at his doctor's having moved offices (at least this is what I think he means by the phrase "my doctor has moved to further delay me addressing these issues ". Doctors change offices all the time, this does not usually interfere with their record-keeping.*
>
> *Paragraph (15) of the document supplied by Mr. Reid on January 22, 2021, reads as follows:*
>
> ***Failure to Comply***
>
> > *15. If a party fails to comply with this direction by failing to provide the Document List within the set time frames or fails to produce a document, the Board or adjudicator assigned to hear the matter may, among other statutory authorities, exercise its or his or her discretion by making determinations at the hearing. For example, it or he or she may refuse to accept the document into evidence or may draw adverse inferences.*
>
> *The February 1, 2021, deadline remains* ***unchanged****. Mr. Reid now has less than a week to deliver a copy of the medical report he was ordered to disclose over a year and a half ago. If he cannot, he will have to demonstrate why he cannot. It may assist Mr. Reid if I provide a hypothetical example of what might constitute proof of his inability to meet this deadline. For example, Mr. Reid might consider providing the Board with copies of the request he sent to his doctor (make sure to include the date), and copies of the doctor's office's reply, advising Mr. Reid they are unable to provide him with his medical report because they have changed offices.*
>
> *Perhaps there are other reasons this deadline cannot be met. If so, proof will be required. I will require convincing evidence as to why he cannot meet this deadline.*
>
> *If Mr. Reid is unable to provide proof of his inability to meet the February 1, 2021, deadline for disclosure of the medical report, then I will consider invoking paragraph (15). Mr. Reid can still proceed with the hearing he has requested, but I may refuse to accept the medical report into evidence.*
>
> [Emphasis in the original]

[58] On January 29, 2021, Mr. Reid sent the following message:

…

I am emailing you today with regard to my medical file that's requested at this time. Thank you for your patience with my ignorance of the protocol to obtain my medical file as requested in this matter.

I apologize that I'm not familiar with this process to obtain disclosure but I understand an ATIP request was made and a letter was sent to the Director of Human Resources at LAC for my complete file to be sent to me. I have yet to receive it to date.

Nor is my medical file with PSAC complete. My doctors' former clinic is not forthcoming with my medical files to add to the files I'd like to disclose which would constitute my "complete medical files" due to the former clinic's delay in sending the file despite several attempts requesting what would be "my complete file". Also is the issue of specialists' files and authorization.

I apologize for my lack of information as to how disclosure is obtained without counsel.

Yesterday I found out that my doctors' new office's [*sic*] *without support staff and its policy is:*

> ***"In order to proceed with any lawyer, I require a fax being sent to my office as I do not send reports without a formal request from your lawyer. Please notify them to fax to my office at [redacted]. I must reiterate that I cannot proceed with any request without a fax sent directly from their office.***
>
> ***Dr. John Kindle"***

Since my legal representation is in limbo at this time, as of yesterday, I'm without counsel or representation regarding this matter at this time.

To complicate this I'm without transportation at this time and there is no bus service where I live.

It's obvious to me that specific labor relations representation familiar with the federal processes is needed and PSAC had only 10 % of disclosure of my medical file when they refused to represent me.

It's also complicated by my disabilities or illnesses and the deficiency in executing my whole file to be provided for TBC despite my attempts.

Due to these issues as well as the lockdown, I'm asking for a reasonable length of time to be given to me to provide my complete file.

Thank you for your understanding in this situation and patience with my inadequacies.

…

[Emphasis in the original]

[59] On January 29, 2021, at 15:58, the employer maintained its objection to granting Mr. Reid an extension of time, noting the following:

> …
>
> … [he] *has known for over 1.5 years that he (or someone acting on his behalf) must obtain and provide his medical file from Dr. Kindle. However, his message below suggests he only began making inquiries yesterday – four days before his final deadline, and months after his most recent extension. We note that his allegations that he has contacted Mr. Kindle's office remain uncorroborated.…*
>
> …

[60] On February 1, 2021, the Board sent the following to the parties:

> *I have had an opportunity to review Mr. Reid's message regarding his failure to provide a copy of Dr. Kindle's medical report by the deadline of February 1, 2021. I have also reviewed Ms. Bergmann's objection to his request for an extension of time. I have carefully considered both submissions.*
>
> *Mr. Reid's correspondence does little to alleviate my concern that he is not pursuing this matter with diligence. He has known, since September of 2019, of his obligation to provide a copy of his medical file to support his claim he lacked the capacity to enter into his settlement agreement. Until Friday, January 29, 2021, I have seen no indication of his having taken any steps to obtain this document from Dr. Kindle. He seems to be under the impression he can only enter into dialogue with Dr. Kindle through a lawyer. If this is the case, I do not know why he is under this impression. He also claims his situation with respect to legal representation is currently "in limbo". The only person who can do anything about this is Mr. Reid himself.*
>
> *The Board has taken his claim seriously and has afforded him a hearing, at which he will be given the opportunity to prove he lacked the necessary capacity to enter into his settlement agreement. The employer opposes Mr. Reid's claim. Since the basis of Mr. Reid's claim is Dr. Kindle's medical report, this document, I can only assume, is important to Mr. Reid's case. It is therefore an important document for the employer. As I have mentioned on several occasions, the employer must be given an opportunity to review the file and prepare its case accordingly.*
>
> *Mr. Reid has been afforded generous opportunities to obtain a copy of his medical file and disclose it. I will provide one last chance for him to do so. The hearing date, April 6, 2021, is no longer practicable since it affords little-to-no opportunity for the Employer to review any disclosure it happens to receive before that date. I am therefore ordering the date of April 6, 2021, to stand as the final deadline for disclosure. Mr. Reid must take the steps he*

> *feels he needs to take in order to satisfy this long-standing disclosure obligation.*
>
> *I will request new hearing dates from the Registrar. It bears mentioning, at this point, that the continued scheduling and re-scheduling of this matter places a strain on everyone's resources. I will ask the Registrar to cancel the hearing dates in April, 2021, and post new hearing dates at a date that is convenient to the Registrar, post- June 15, 2021. Whatever hearing dates the Registrar is able to provide must be considered to be cast in stone, and these dates will not be changed. It is not in the public interest, or indeed in anyone's interest at all, to permit this matter to drag on any further.*
>
> *To be clear, I repeat that Mr. Reid must make disclosure of the materials upon which he intends to rely* ***by April 6, 2021****, or risk being denied the opportunity to use these materials at his hearing, which will take place at some time in early Summer of 2021 (precise dates to be provided by the Registrar, at the Registrar's convenience). The parties will be advised of the hearing dates in due course.*
>
> [Emphasis in the original]

[61] The Registrar advised the parties of the new hearing dates, June 16 to 18, 2021, adding that "the above-noted dates are considered '**final**'" [emphasis in the original].

[62] In an email that Mr. Reid dated March 29, 2021, he wrote to the Board, as follows:

> *Hello all.*
>
> *I contacted my doctors' office and they once again requested, as they have in the past, that:*
>
> > *"In order to proceed with any lawyer, I require a fax being sent to my office as I do not send reports without a formal request from your lawyer. Please notify them to fax to my office at [number omitted]. I must reiterate that I cannot proceed with any request without a fax sent directly from their office.*
> >
> > *Dr. John Kindle"*
>
> *[…]*
>
> *I went through my email and went online to find that no fax was available for Amanda Bergman and I noticed there was never a fax number provided by Amanda Bergmann even after this request from my doctor was received by all parties. Therefore since I could not find a fax number for Amanda Bergmann, could you please provide one and what exactly she wants to my doctor as he requested.*

> *My doctors' office requested that a new request from you be sent by fax to my doctor, a release of information specifying exactly what you're asking him to provide. He's requested this method of communication to date.*
>
> *To clarify my obligations before the Board, as I understand those obligations you speak of regarding me, I deem that they're complete when you provide my doctor with your requirements of him. I understand that there are no more requirements of me regarding this specific matter before the board. I would ask the same rules be applied to me in my requests to various parties involved in this issue.*
>
> *Further as was pointed out to me the parties must be given an opportunity to review the file and prepare its case accordingly. Since the request by me for my complete file dates back to 1999, to April 2010 then through ATIP with Renfrew Legal Clinic in 2012 this discovery that I requested was never satisfied. Both LAC and also PSAC have not fulfilled these requests to date. Am I not entitled to discovery?*
>
> *Specifically, I remain without fulfillment of this disclosure which was a condition of the MOS agreed to by PSAC and the board. Included in these agreements are other clauses that were never fulfilled by PSAC nor LAC after a. 20-year abeyance of a WSIB claim held until I was healthy enough to participate. LAC refused to cooperate with this WSIB claim in 1999 according to PSAC's Denis McCarthy. That claim remains without any work done to fulfill PSAC's representation as with the 2010 WSIB claim to which LAC's denial of me being in the locations I specified. LAC chose not to tell the truth nor to respond to the first claim and LAC chose to lie about the second claim in 2010 and then fire me without cause before I could appeal either claim.PSAC refused to address the same WSIB claims, my DI I claim which I was on with Sunlife at the time of termination, my pension, retirement, harassment, discrimination as the MOS specified they do to fulfill their obligations in this agreement / MOS.*
>
> *Why has no discovery been delivered to me after 2 decades why have all parties not provided the disclosure I asked for in order to address the specifics of why my health was compromised?*
>
> [*Sic* throughout]

[63] The employer responded noting "… I am the Employer's lawyer, not his. I cannot contact Dr. Kindle on his behalf. I encourage him to review the Board's direction below and to seek independent legal advice if he has any further questions on how to proceed."

[64] On March 31, 2021, the Board wrote as follows:

…

> *I have read Mr. Reid's correspondence dated March 29, 2021, and the Employer's response the following day. I thought I had made myself abundantly clear in my many earlier messages regarding the disclosure of Mr. Reid's medical file, which is apparently being held at the offices of Dr. Kindle. Ms. Bergmann has quite correctly pointed out that she is the Employer's lawyer, not Mr. Reid's lawyer. She cannot arrange for the disclosure of Mr. Reid's medical file.*
>
> *It bears repeating, apparently, that the only person who can take the necessary steps to provide for the disclosure of this medical file is Mr. Reid himself. He must do so by whatever means necessary, and he has known this for over eighteen months now.*
>
> *Mr. Reid, in his message dated March 29, 2021, goes on at length about issues that are completely irrelevant. I find Ms. Bergmann has encapsulated the circumstances quite well with her observation,*
>
> > *Further, I understand this hearing is intended to adjudicate Mr. Reid's allegations that he did not have the medical capacity to enter into the settlement agreement dated November 24, 2011 (sic). It is not intended to address outstanding disclosure issues related to the grievances settled by this memorandum of settlement. Subject to correction from the Board, it is the Employer's belief that there are no outstanding disclosure concerns at this time aside from the medical file from Dr. Kindle.*
>
> *There is no need to correct this statement. It is true. There is only one disclosure issue at play, and that is the disclosure, by Mr. Reid, of his medical file. I have granted several extensions to the deadline to provide such disclosure. The last extension, granted in January of 2021, came with a stern warning that April 6, 2021, was the final opportunity for Mr. Reid to disclose his medical file. I must admit to being distressed to see correspondence from Mr. Reid less than a week ahead of this deadline which seems to show no progress at all from the last time an extension was granted.*
>
> *This hearing will proceed as scheduled on June 16, 17, and 18, 2021. If Mr. Reid intends to rely on information contained in his medical file to support his allegation that he lacked the medical capacity to enter into his settlement agreement, then this medical file must be disclosed to the Employer in sufficient time before the hearing to allow the Employer to respond to Mr. Reid's allegation. If the medical file is not disclosed by* ***April 6, 2021****, then Mr. Reid risks losing the ability to rely on the information it contains.*
>
> …
>
> [Emphasis in the original]

[65] At 21:08, on the day of the deadline, Tuesday, April 6, 2021, Mr. Reid sent the following:

> *Good evening.*
>
> *Thank you for your patience with me obtaining a lawyer.*
>
> *I'm still without a lawyer to send my medical files to you.*
>
> *My doctor's confused as to why this is not an easier process.*
>
> *The request for a waiver for my doctor is also recent.*
>
> *I have another appointment with a lawyer to obtain what it is you need for me to send my complete file.*
>
> *In the interest of my disclosure being the relevant documentation, I will find a lawyer to send my medical files asap.*
>
> *Please be patient with me to get these files to Ms Bergmann asap.*
>
> *I apologize for the delays and am seriously looking for a lawyer.*
>
> *I ask for time to find a lawyer and get my records to you.*
>
> *Yours Truly*
>
> *Jeff Reid*
>
> …
>
> [*Sic* throughout]

[66] On April 7, 2021, the Board informed the parties that "[g]iven that Mr. Reid has had eighteen months to disclose this material, and given his lack of progress since the last time this deadline was extended in January of 2021, I am not inclined to delay matters any further."

[67] On May 11, 2021, the Board advised the parties of a Zoom test session on Monday, May 31, 2021, at 13:00, to ensure that the videoconferencing platform was working properly before the June 16 to 18, 2021, hearing.

[68] On Wednesday, May 12, 2021, at 08:57, in response to having been included by Mr. Reid in an email naming him as a witness, Dr. Kindle wrote the Board as follows: "Why am I getting this invitation? I have not agreed to this; not spoken to any lawyers; and will not be participating without prior conversation."

[69] A message was sent to the parties confirming that only those witnesses who had properly been served a summons were required to attend the Zoom test session.

[70] On May 14, 2021, the Board's Registry referred Mr. Reid to the Board's website and its guide for self-represented participants as resources in preparation for the hearing.

[71] On May 31, 2021, at 13:00, the Zoom test session took place. Mr. Reid was present. The employer was present, with witnesses. None of the individuals listed as witnesses by Mr. Reid were present.

[72] Mr. Reid advised that Ms. Dolan would be called as a witness and that once she had testified, she would assist him. Mr. Reid advised that she would dial-in as she did not have access to a computer with video capability. I advised him that it was his responsibility to ensure the attendance of his witnesses by whatever means were at his disposal and that the hearing would proceed on June 16, 2021, at 09:30, even in the absence of one or more witnesses. I reminded him that no request for a summons had been received.

[73] During the test session, the employer signalled that it had not received any disclosure of any kind. Specifically, it had not received a copy of Dr. Kindle's medical report.

[74] On June 16, 2021, at 09:30, the employer, along with its only witness, was present for the videoconference hearing. Mr. Reid was not present. Nor were any of the individuals Mr. Reid had listed earlier, namely, Dr. Ofokansi, Dr. Kindle, or Ms. Dolan.

[75] I delayed the start of the hearing by one hour to permit Mr. Reid, or someone on his behalf, to either attend or respond to the Registry Officer's voicemails and emails. During that time, I instructed the Registry Officer to continue with attempts to contact him. Her efforts were numerous and without success. Voicemail messages were left for him, and emails were sent to him. The Registry Officer contacted Ms. Dolan, who advised that she would not attend. She expressed surprise that Mr. Reid was not there, because she told the Registry Officer that she had spoken with him just the night before, at which time he indicated to her that he still wished to proceed.

[76] The hearing was scheduled to commence at 09:30. After waiting one hour for Mr. Reid, I opened the hearing in his absence and received the employer's evidence.

III. Summary of the employer's evidence

[77] Sylvie Houle was the employer's only witness. Retired since December 2019, she was its Director of Well-being, Learning, and Labour Relations. She is acquainted with Mr. Reid and knew of the circumstances that gave rise to his termination grievance. She also knew of his request for an extension of time to file it and the complete history of

this matter. She testified that she has never known Mr. Reid to suffer from any lack of cognitive capacity.

[78] While Mr. Reid was with LAC, requests were made with Health Canada for fitness-to-work evaluations. His work entailed lifting and moving heavy items, and the employer wanted to ensure that he worked within his physical limitations. The fitness-to-work requests did not ask for any cognitive capacity tests because it was never an issue.

[79] Ms. Houle testified that in late 2015, she, counsel for the employer, and counsel for Mr. Reid were in active settlement discussions. The parties jointly requested an adjournment to negotiate the settlement details. In fact, testified Ms. Houle, a draft agreement was reached, but Mr. Reid decided at the last minute not to sign it. New hearing dates had to be set as a result.

[80] The matter took a couple more years to come to a hearing, but it was finally set to commence on November 21, 2017. Once again, Mr. Reid was not present. On the first day of the hearing, the parties once again advised the Board that they were deeply involved in settlement discussions, and they requested an adjournment. Ms. Houle recalled that since Mr. Reid had failed to sign the settlement agreement once before, it was requested of the Board that if he failed to sign it again this time, the hearing should commence.

[81] Mr. Reid did not sign the settlement agreement on November 22, 2017. The hearing opened on November 23, 2017, in his absence; he was represented by legal counsel. The hearing opened with the testimonies of two of the employer's witnesses. When the parties appeared on the morning of November 24, 2017, Mr. Reid's counsel advised that Mr. Reid was now prepared to sign the agreement, so the matter was adjourned. Later that day, his signature was obtained.

[82] Exhibit E-1, Tab 1, is the settlement agreement. A sealing order was requested for this exhibit based on the information it contains. It has a clause calling for its confidentiality. I applied the "*Dagenais/Mentuck*" test to determine whether it was necessary to seal this exhibit.

[83] In *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 SCR 835, and subsequently in *R. v. Mentuck*, 2001 SCC 76, the Supreme Court of Canada formulated

the test (referred to as "*Dagenais/Mentuck*") for when a discretionary confidentiality order may be ordered. The test holds that confidentiality measures should be ordered only in case of the following:

> • such an order is necessary to prevent a serious risk to the proper administration of justice because reasonable alternative measures will not do, and
> • the salutary effects of the publication ban outweigh the deleterious effects on the rights and interests of the parties and the public, including the effects on the right to free expression, the right of the accused to a fair and public trial, and the efficacy of the administration of justice.

[84] Ms. Houle had to refer to the settlement agreement when she testified about her experiences during the settlement negotiation process and its implementation. The agreement was accepted as an exhibit and as such is subject to public access pursuant to the Board's *Policy on Openness and Privacy* if no confidentiality order is imposed. This Board has held that it is in the interests of labour relations to preserve the confidentiality of settlement agreements (see *Ross v. Public Service Alliance of Canada*, 2017 FPSLREB 13 at para. 12; and *Valderrama v. Deputy Head (Department of Foreign Affairs, Trade and Development)*, 2020 FPSLREB 86 at para. 12). I find that a sealing order is necessary to preserve this interest and that an alternative measure, such as redacting the document, would not be reasonable in the circumstances given it is the entirety of the agreement that is meant to be confidential.

[85] Secondly, I find that the deleterious effects of such an order are negligible. No one outside the hearing needs to know the precise details of the settlement agreement; they need only know that one exists. Also, the settlement agreement contains personal information. It also contains information on the terms of settlement that were explicitly meant to be kept confidential as a term of the settlement.

[86] Therefore, I order sealed exhibit E-1, Tab 1, along with related exhibit E-1, Tab 2, which also contains details of the terms of settlement.

[87] Ms. Houle was present in November of 2017 for the settlement discussions between Mr. Reid's lawyer, Andrew Astritis, and the employer's lawyer, Jenna-Dawn Shervill. No one raised any capacity issues during the settlement negotiations.

[88] Ms. Houle testified about the steps the employer has taken to implement the terms of the settlement agreement, including a certain benefit that Mr. Reid has

received as part of that agreement. He has never returned this benefit or expressed an intention to return it.

[89] Ms. Houle testified that Mr. Reid has not implemented the terms of the settlement agreement other than by accepting the benefit of it. Instead, he contested the legitimacy of the settlement agreement on the grounds of incapacity.

IV. The employer's argument

[90] Only one question had to be determined at the hearing; namely, whether Mr. Reid had the capacity to enter into his settlement agreement.

[91] The employer submitted the Ontario *Substitute Decisions Act, 1992* (S.O. 1992, c. 30; employer's book of authorities, Tab 1). Section 2(1) states, "A person who is eighteen years of age or more is presumed to be capable of entering into a contract." Section 2(3) provides this exception:

> *(3) A person is entitled to rely upon the presumption of capacity with respect to another person unless he or she has reasonable grounds to believe that the other person is incapable of entering into the contract or of giving or refusing consent, as the case may be.*

[92] According to the employer, Ms. Houle's testimony, along with Mr. Reid's actions, provide no grounds to believe that Mr. Reid was incapable of entering into the settlement agreement due to medical incapacity.

[93] The employer argued that since he was represented by legal counsel, Mr. Reid had to be capable of providing instructions to his lawyer on November 24, 2017. If his lawyer had grounds to believe that Mr. Reid lacked capacity, his lawyer would have been unable to act on his behalf.

[94] No concerns were ever raised about Mr. Reid's ability to instruct counsel. *Constantino v. Constantino*, 2016 ONSC 7279 at para. 47 (employer's book of authorities, Tab 2), sets out this test:

> *47 To meet the test for capacity to instruct legal counsel, a person must:*
>
> *a) Understand what they have asked the lawyer to do for them and why;*

> *b) Be able to understand and process the information, advice, and options the lawyer presents; and*
>
> *c) Appreciate the advantages and drawbacks and the potential consequences associated with the options they are presented with.*

[95] Mr. Reid, through counsel, has been considering the settlement of his matter since 2015. He knew enough about what was being asked of him in 2015 to decide that he did not want to sign the agreement that had been drafted at that time. It is apparent, argued the employer, that Mr. Reid was fully competent to instruct legal counsel and to make his own decisions about how he wanted to proceed.

[96] *Constantino* illuminates the analysis of a finding of incapacity as follows, at paragraphs 42 and 43:

> *42 … it is not enough to establish that the individual's words, deeds, or choices seem unreasonable to others. Rather, the evidence must establish, in respect of the issue(s) in the proceeding, that the party is unable to understand and appreciate relevant information or the reasonably foreseeable consequences of a decision, not simply that they fail to do so. Justice Backhouse, in* C.C. v. Children's Aid Society of Toronto*, in 2007, stated, "There is a distinction to be drawn between* ***failing*** *to understand and appreciate risks and consequences, and* ***being unable*** *to understand and appreciate risks and consequences. It is only the latter that can lead to a finding of incapacity."*
>
> *43 The issue, then, is whether the litigant is capable of understanding information that is relevant to making a decision in respect of the issue(s) in the proceeding, or is able to appreciate the reasonably foreseeable consequences of a decision ….*
>
> [Emphasis in the original]

[97] The ability to instruct counsel is arguably more complex than the ability to enter into a contract, maintained the employer. Since Mr. Reid was obviously capable of instructing counsel, it logically follows that he was capable of entering into the settlement agreement.

[98] The employer submitted that Mr. Reid had the onus of demonstrating that he lacked capacity on November 24, 2017. He submitted no such proof. Paragraph 38 of *Constantino* states, "Where mental capacity is in doubt or challenged in a legal

proceeding, the moving party bears the onus of establishing that the party is incapable, and must provide evidence regarding the 'nature and extent' of the incapacity."

[99] The threshold for setting settlements and contracts aside is understandably very high. Otherwise, there would be a chilling effect on the settlement process, which would be contrary to both the public interest and the administration of justice. In the case of *Topping v. Deputy Head (Department of Public Works and Government Services)*, 2014 PSLRB 74 at para. 126 (employer's book of authorities, Tab 8), the Board indicated that it is on the grievor to establish that he did not have the capacity to enter into the agreement:

> *126 I agree with the reasoning in* Karaim *at paragraph 29, which is that "a deal is a deal unless there are compelling labour relations reasons to set the agreement aside." Clearly, one party not having the required mental capacity when the agreement was made would be a compelling labour relations reason, and the agreement would be set aside. It is not sufficient for a party merely to state that it did not have the mental capacity to enter into the agreement. Evidence that can be tested on an objective standard must be produced at the hearing.*

[100] The employer submitted that items of correspondence from Dr. Kindle to Mr. Reid can not be admitted into evidence and may not be relied upon in any way. The author, Dr. Kindle, was never summoned to the hearing, and the statements Dr. Kindle made could not be tested under cross-examination.

[101] By failing to appear at his hearing, Mr. Reid offered no evidence whatsoever of his incapacity.

[102] At paragraph 101, *Topping* refers to *Karaim v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 1-85*, BCLRB No. B24/2008, as follows:

> ***101*** *… it was policy not to look behind settlement agreements. At paragraphs 29 and 30 of Karaim, the arbitrator stated the following:*
>
> 29.
>
> …
>
> *…* ***"[A] deal is a deal" unless there are compelling labour relations reasons to set the agreement aside.***

> 30. Where a party enters into an agreement under duress or as a result of undue influence, the agreement was not entered into voluntarily and therefore will not be enforceable against that party. Not all forms of pressure or stress constitute duress or undue influence. In the labour relations context, the test for undue influence and duress is very high. As noted in *Jennifer MacDonald*, BCLRB No. B315/2002, at para. 55:
>
> ***In law, a party will not be held to an agreement it has entered into under duress or as a result of undue influence. For an agreement to be binding, it must be entered into freely .*** *However, this does not mean that any form of pressure will render an agreement voidable. Agreements, particularly in labour relations matters, are not made under sterile or laboratory conditions. It is completely unrealistic to suggest that anyone is entitled to decide to enter into an agreement free of any pressure whatsoever. Like it or not, pressures are part of life. Most decisions, particularly significant ones, are made under pressure, sometimes pressure so overwhelming that it could be said that the person had no real choice but to act as s/he [sic] did. The real question is not whether there was pressure, but whether it was undue or improper in the circumstances.*
>
> …
>
> [Emphasis in the original]

[103] The employer argued that the threshold for overturning an agreement on the basis of incapacity is subject to the same very high threshold that applies to duress. The contract must not be overturned unless there is clear and compelling evidence of incapacity.

[104] The Alberta Court of Queen's Bench, in *RMK v. NK*, 2020 ABQB 328 (employer's book of authorities, Tab 6), had occasion to address the issue of capacity. It stated as follows at paragraphs 130 to 133:

> *130 Whether an individual has the requisite capacity for the decision being made is a question of fact to be determined in all of the circumstances. The assessment is a highly individualized and fact-specific inquiry ….*
>
> *131 There is a presumption in law that an adult has the capacity to contract. The burden or onus is on anyone attempting to show a lack of capacity on a balance of probabilities … If the Court concludes that the evidence is ambivalent or equivocal or does not reach the standard of proof of balance of probabilities, then the Court will make a finding against the party who bears the burden of proof ….*
>
> *132 The case of* Bank of Nova Scotia v. Kelly *(1973), 5 Nfld. & P.E.I.R. 1, 41 D.L.R. (3d) 273 (P.E.I. S.C.) [*Kelly*] set out a test for*

> *determining capacity to contract which has been followed by other Canadian Courts. For the contract to be valid, both parties must have: (a) the ability to understand the nature of the contract; and (b) the ability to understand the contract's specific effect in the set of circumstances to which it pertains. The question is not whether the contracting party whose capacity is in question failed to understand the nature and effect of the contract; rather, the question is whether the person was* capable *of understanding it ….*
>
> *133 … a person is, in law, mentally incompetent when they are, by reason of their mental state, unable to understand the nature and terms of the contract and of forming a rational judgment of its effect upon their interests ….*

[105] Mr. Reid has been involved for many years in settlement discussions on these issues. In December of 2015, the negotiations had reached a point at which a draft settlement agreement was in place. He chose not to sign that agreement, and the matter was placed back on the schedule for a hearing on the merits of the grievance. Thus, the employer argued, Mr. Reid has already demonstrated a clear knowledge of the nature and terms of the contract. He clearly knows what is at issue in the settlement agreement since it has been the subject of careful consideration for several years. As stated at paragraph 171 of *RMK*, "… the evidence is that there were settlement discussions prior to the settlement meeting itself; the entire Settlement Agreement did not arise suddenly without the opportunity for consideration and reflection…."

[106] The employer pointed out that Mr. Reid certainly understood and accepted one of the employer's terms of settlement, namely, the benefit he received under the settlement agreement. He cannot have the capacity to accept some terms and lack the capacity to accept others.

[107] Furthermore, Mr. Reid was represented in December of 2015 and in November of 2017 by skilled and experienced legal counsel. Paragraph 143 of *RMK* states as follows:

> *[143] The capacity to instruct counsel involves the ability to understand financial and legal issues. This puts it significantly higher on the competency hierarchy:* **Calvert** *at para 56. However, it is not necessary that a client understand all the details necessary to settle their case. Just as any person can hire an expert to handle complex affairs that are beyond their personal expertise, a client can rely on their lawyer or representative to understand the specific details and processes involved ….*

> [Emphasis in the original]

[108] Mr. Reid signed the settlement agreement, and alongside it, he wrote the date, November 24, 2017.

[109] The employer argued that not only did Mr. Reid fail to present any evidence of incapacity, but also the evidence that was brought forward shows that on the balance of probabilities, he indeed had the requisite capacity to enter into the settlement agreement.

[110] Therefore, Mr. Reid's motion to strike down the settlement agreement must be dismissed, argued the employer.

V. Decision on Mr. Reid's motion

[111] I accept the employer's submitted arguments and supporting case law, which describe the threshold for overturning contracts and agreements as very high. I would add that a valid and binding settlement is normally a bar to the Board's jurisdiction to hear the underlying grievance. However, as confirmed in *Amos v. Canada (Attorney General)*, 2011 FCA 38, the Board retains the authority to determine whether there is in fact a final and binding settlement agreement or whether it ought to be set aside for, as argued in this case, incapacity. The decision in *Amos* also confirmed the Board's authority to determine whether a party has complied with the terms of a settlement agreement. Mr. Reid's motion did not raise an issue with respect to the employer's compliance with the terms of the settlement agreement, only that the agreement was not final and binding due to his alleged incapacity. Mr. Reid did not present evidence or argument to substantiate his claim and I am satisfied on the basis of the evidence presented by the employer that there is a final and binding settlement agreement.

[112] Mr. Reid was represented by counsel in the negotiation of the settlement agreement, both in 2015 and in the settlement agreement that is at issue in this motion, in November of 2017. Paragraph 124 of *RMK* states as follows:

> *[124] … in regard to settlement agreements generally, it is well-established law that "a solicitor of record has the ostensible authority to bind his or her clients and that opposing counsel are entitled to rely upon that authority in the absence of some indication to the contrary" ….*

[113] Many of Mr. Reid's emails to the Board are replete with references to the elements of the settlement agreement. Since he did not appear, Mr. Reid could not reconcile his ability to provide such detailed accounts with his claim of incapacity.

[114] I cannot accept Dr. Kindle's correspondence of January 24, 2018, or his letter to Mr. Reid dated March 29, 2019, as evidence of Mr. Reid's incapacity. The basis for Dr. Kindle's observations are presumably contained in a medical report. Starting as far back as December 4, 2018, it was made abundantly clear to Mr. Reid many times that if he wished to have Dr. Kindle testify or if he wanted to otherwise present evidence with respect to Dr. Kindle's opinion on Mr. Reid's mental capacity to enter into the settlement agreement, then he would have to follow well-established procedural rules to allow the employer to respond to those claims. First and foremost, the medical report would have to be disclosed. Mr. Reid acknowledged this obligation several times, but he never followed through.

[115] Dr. Kindle's message to the Board indicates he knew about the June 16, 2021, hearing, but he was never summoned to attend, and he did not attend of his own accord.

[116] The employer presented compelling evidence that, despite Mr. Reid's argument that the agreement is not binding on him, he accepted the benefit of the terms of the settlement. Mr. Reid did not attend the hearing to explain how he is able to reconcile his acceptance of some of the terms of the settlement agreement with his assertion that he should never have entered into the agreement in the first place.

[117] Ultimately, there is no evidence of Mr. Reid's incapacity. Rather, the evidence on record indicates that Mr. Reid was represented throughout the negotiation of the settlement agreement, that he understood the terms and conditions of the settlement agreement, including having previously rejected an offer to settle the matter and thereafter signing the current agreement at issue. In the end, he accepted the benefit and thus accepted the deal that was struck.

[118] I am satisfied based on the arguments and documentation presented by the employer, along with Ms. Houle's testimony, that there was a final and binding settlement agreement created on November 24, 2017.

[119] Pursuant to the settlement agreement, Mr. Reid agreed to withdraw the grievance that forms the basis of the present matter. As stated in *Amos* at para. 65, "… it is in the interest of certainty in labour relations that legitimate settlement agreements be so …" and that, without implementation, there cannot be certainty in labour relations, "… the purpose itself of final and binding settlement agreements …". Having found there to be a final and binding settlement agreement, I dismiss Mr. Reid's motion and order that the Board's grievance files underlying the settlement agreement be closed.

VI. The issue of Mr. Reid not attending the June 16, 2021, hearing

[120] As indicated previously, on the morning of June 16, 2021, the employer's witness was present, and the employer was prepared to proceed. Mr. Reid was not present; nor was any person on his behalf or any person he had listed as a witness.

[121] I instructed the Registry Officer to call Mr. Reid's telephone number, the one he used to establish the video connection on May 31, 2021, and to send him an email reminding him of his hearing. The Registry Officer advised me that she did so. She left a voice-mail message for him on her initial call, but advised that subsequent phone calls did not go to any voice-mail mechanism, the phone just continued to ring. The Registry Officer advised that she took the additional step of contacting Ms. Dolan, who informed the Registry Officer that she would not attend the hearing. Apparently, Ms. Dolan expressed surprise upon learning that Mr. Reid was not there, because she had just spoken to him the night before, at which time Mr. Reid had expressed his desire to proceed with the matter.

[122] On that basis, I rejected the employer's preliminary motion to dismiss Mr. Reid's motion on the grounds of abandonment. If Mr. Reid truly did express a desire to proceed less than 12 hours or so before his hearing was about to commence, then it was not likely that he intended to abandon his motion.

[123] I waited one hour for Mr. Reid to either join the videoconference hearing or to contact the Registry Officer to explain his absence. I remained in contact with the Registry Officer throughout that one hour, and no message was received from Mr. Reid. Therefore, I commenced the hearing in his absence at 10:30 a.m. and received the testimony of Ms. Houle, the exhibits, and the employer's submissions and case law. I then concluded the hearing.

[124] Later that same afternoon, I received a message from the Registry Officer, advising she had learned from Ms. Dolan that Mr. Reid "was in the hospital". I immediately sent the following message to both parties:

> *The hearing into Mr. Reid's capacity to enter into his settlement agreement opened this morning in Mr. Reid's absence. After one hour, having received no communication from Mr. Reid or anyone acting on his behalf, I opened the hearing and received the testimony of the employer's sole witness. I also heard closing arguments from the employer's counsel. I then closed the hearing.*
>
> *I have recently been informed that the reason Mr. Reid did not attend his hearing this morning is that he was hospitalized. I wish to express my sincere concern for Mr. Reid's well-being, but I will need to know, in the shortest possible delay, the details of this unfortunate event.*
>
> *Once I have received further information from Mr. Reid or someone acting on his behalf, I will be in a better position to seek input from the parties on what our next steps might be.*

[125] The hearing was scheduled to run from Wednesday, June 16, to Friday, June 18, 2021, inclusively. On Friday afternoon, June 18, 2021, at 14:17, the Board received the following email from Mr. Reid:

> …
>
> *As per my power of attorney who informed you I have been under medical care since June 16, 2021.*
>
> *Please accept my apology for the inconvenience as this is why I could not attend my hearing June 16 to 18, 2021.*
>
> *Please do not contact my power of attorney*
>
> …
>
> *Please note my doctor requests the same until June 28, 2021.*
>
> *All related treatment is confidential until further notice and will be provided in due course upon request.*
>
> *Thank you for your patience with this.*
>
> *Sorry for any difficulties this may have caused.*
>
> …

[126] In response, the Board wrote to the parties to indicate that it would respect Mr. Reid's request and would not communicate with either party until after June 29, 2021.

[127] On Wednesday, August 4, 2021, the Board wrote to the parties as follows:

> *A hearing into Mr. Reid's Motion to set aside a settlement agreement owing to a lack of capacity was conducted the morning of Wednesday, June 16, 2021. In the afternoon of that date, after the hearing had been closed, Ms. Dolan, acting on Mr. Reid's behalf, advised the Board that Mr. Reid could not attend his hearing because he had been hospitalized. On Friday, June 18, 2021, Mr. Reid wrote to the Board indicating he was under medical care and under doctor's orders not to enter into communication with the Board until June 28, 2021. Mr. Reid also ordered that no communication be made with Ms. Dolan.*
>
> *Mr. Reid, I am now ordering you (or someone on your behalf) to provide,* ***by close of business Friday, August 13, 2021****, proof of your hospitalization on Wednesday, June 16, 2021. If you fail to provide this proof, a decision on your Motion will be issued based on the record to date.*
>
> [Emphasis in the original]

[128] On August 11, 2021, Mr. Reid wrote the Board, as follows:

> …
>
> *Thank you for this opportunity to* [enclose proof of] *my Queensway Carleton Hospital emergency admittance on June 16/21.*
>
> *With a lack of communication with the 2 cancer patients involved in this request … I'm able to provide the following confirmation from my online confidential patient portal at this time.*
>
> …

[129] Mr. Reid's August 11, 2021, message included text which he stated was from his online patient portal. It reads as follows, in part:

> *JEFF REID's Visit History*
>
> …
>
> *16 Jun 2021 at 5:41 am Emergency QCH – Emergency*
>
> …
>
> *Visit Care Team Provider Type*
>
> *Dr. John Edward Kindle Family Provider*
>
> *Dr. Miguel Cortel-LeBlanc, MD Emergency Provider*
>
> **…**

[130] Mr. Reid concluded, in his message of August 11, 2021:

> …
>
> *I trust that this will suffice at this time.*

> *If this is not adequate and you've not received my own GP/MD doctor's confirmation of this admittance to QCH ER as I requested of him, please contact me and I'll provide the required deficit to you that you require asap.*
>
> ...

[131] The employer challenged both the reliability and sufficiency of the information provided by Mr. Reid on August 11, 2021, with the following email:

> …
>
> *With respect to reliability, an alleged copy & paste excerpt from an online portal falls far short of the official documentation typically required in these circumstances. There is simply no way to verify whether the information provided below was changed or omitted prior to it being conveyed. Given the seriousness of the question – should an already litigated matter be reopened – official documentation should be a minimum requirement.*
>
> *With respect to sufficiency, even if the below information is accepted as true, the below shows the approximate intake time as 5:30AM, with no indication of duration of his stay. As the Board will recall, the hearing was initially conveyed at 9:30am and all parties were present until shortly before noon. Mr. Reid has failed to explain how his alleged attendance at the hospital at 5:30am precluded him from attending the Zoom hearing or contacting the Board to advise of his inability to attend for the next ~6.5 hours. Likewise, the below record also fails to explain why Mr. Reid was at the hospital in the first place. Such information is undoubtedly necessary for the Board to determine whether his attendance at the hospital sufficiently justified him missing the scheduled hearing date.*
>
> ...

[132] On August 18, 2021, the Board wrote to the parties as follows:

> …
>
> *I have reviewed Mr. Reid's correspondence of August 11, 2021, along with Ms. Bergmann's response.*
>
> *It is only in exceptional circumstances that the Board will reschedule a hearing that has already been concluded.*
>
> *Mr. Reid's stated reason, on June 18, 2021, for not attending the hearing on June 16, 2021, was that he was under medical care. He later indicated he was admitted to the Emergency ward of Queensway Carleton Hospital at 5:41 the morning of June 16, 2021. Mr. Reid has not indicated when he was discharged or why he was unable to attend his hearing or at least advise the Board of*

> *his absence. The Board finds the information he has provided to date is not satisfactory and does not clearly establish that he was unable to attend the hearing.*
>
> *In support of Mr. Reid's assertion that he was admitted to the emergency at Queensway Carleton Hospital on June 16, 2021, the Board requires a letter from the treating physician(indicated in his correspondence as Dr. Miguel Cortel-LeBlanc, MD Emergency Provider) confirming the date and time of Mr. Reid's admittance and discharge.*
>
> *The Board also requires from Mr. Reid a satisfactory explanation as to why, after his discharge, he did not attend his hearing or advise the Board of his absence.*
>
> *Mr. Reid is to provide the requested proof and explanation by* ***Tuesday, August 24, 2021.*** *In the absence of this proof and explanation, a decision on your motion will be issued based on the record to date.*
>
> …
>
> [Emphasis in the original]

[133] Mr. Reid replied on the deadline date of August 24, 2021, with the following:

> …
>
> *Thank you for the opportunity to fulfill your requirements as listed below in my case at the board.*
>
> *I am requesting more time to fulfill those requests due to circumstances beyond my control.*
>
> *I will need another month to obtain the information that you requested so please consider this request as legitimate but necessary.*
>
> *I apologize for this delay and I'm looking forward to fulfilling your requests of me and getting* [my first chance] *to represent myself before the board.*
>
> …

[134] The Board issued the following to the parties on August 25, 2021:

> *I have read Mr. Reid's correspondence dated Tuesday, August 24, 2021, the deadline date for the information he was ordered to provide. I do not consider his request for an extension to be either legitimate or necessary. He mentions "circumstances beyond his control" but does not state what those circumstances are or why they have prevented him from providing the information. It would have been helpful to know what steps, if any, he has taken to satisfy the informational requirements I ordered.*

> *In the absence of any explanation whatsoever I cannot grant the extension he has requested. I will, however, give him one last chance. Mr. Reid has until* ***close of business Friday, August 27, 2021****, to provide an explanation for not attending his hearing on June 16th, 2021, and an explanation as to why he was unable to at least notify the Board of his absence on that date. I will also require a letter from the treating physician in Emergency, whom Mr. Reid has identified as Dr. Miguel Cortel-LeBlanc, stating clearly the date and time of Mr. Reid's admission to Emergency as well as the date and time of Mr. Reid's discharge. In the absence of proof of Mr. Reid's inability to attend his hearing or advise the Board of his absence, a decision will be rendered on the basis of the record to date.*
>
> [Emphasis in the original]

[135] On Friday, August 27, 2021, Mr. Reid wrote the Board, as follows:

> *Thank you for the opportunity to fulfill your requirements as listed below in my case at the board.*
>
> *I am requesting more time to fulfill those requests due to circumstances beyond my control.*
>
> *…*
>
> *Please note that I've enclosed all of my medical records that are currently available including on the online portal which has been added daily for your consideration.*
>
> *…*

[136] Mr. Reid's message continued, with approximately one page of information which, as he indicated, appeared to be text copied from his medical records, including information on various appointments he had on June 17 and 18, 2021, and his admission to the Emergency ward of Queensway Carleton Hospital at 5:41 a.m. on June 16, 2021. The date and time of discharge were not indicated.

[137] On September 1, 2021, I denied Mr. Reid's request for a further extension. I explained that, despite repeated requests for a doctor's note stating clearly the date and time of Mr. Reid's admission to the emergency, as well as the date and time of Mr. Reid's discharge, such information was not forthcoming nor was any new information provided to explain why he did not attend the hearing or advise the Board of his absence.

[138] Mr. Reid repeated his request for an extension on the basis of circumstances beyond his control, again without providing any explanation as to what those

circumstances actually were. In the absence of a clear, convincing, and cogent justification for Mr. Reid's inability to attend his hearing or advice of his absence, I conclude that I have no reason to revisit my decision, on June 16, 2021, to commence the hearing in his absence, after a one-hour delay, and to close the hearing that same day.

VII. Additional comments about the grievor's conduct

[139] Apart from the specific issue of not attending the hearing on June 16, 2021, I wish to add some additional comments about Mr. Reid's conduct throughout these proceedings.

[140] Mr. Reid has a history of not attending his hearings. In March of 2015, he remained unrepresented until the 11th hour, at which time his counsel requested (and was quite rightly provided with) an adjournment to prepare Mr. Reid's case.

[141] The hearing into the application for an extension of time to file a grievance, scheduled for December 7 and 8, 2015, was adjourned at the 11th hour at the parties' request since they were engaged in settlement discussions. Thus, Mr. Reid was spared having to attend that hearing as well. His refusal to sign the negotiated settlement agreement meant that new hearing dates had to be set.

[142] A new date was set, for November 22, 2017. Mr. Reid did not attend that hearing either. It was started in his absence, and the testimony of two of the employer's witnesses was received. A couple of days later, he signed the settlement agreement.

[143] A few weeks later, Mr. Reid raised a motion to the effect that he lacked the cognitive capacity to enter into the agreement. In his correspondence, he insisted on an oral hearing into his motion to quash the settlement agreement, and he insisted this hearing takes place as soon as possible.

[144] A case management conference, designed to expedite the hearing process, was attempted. Ultimately, it could not be held, because Mr. Reid refused to make himself available, despite being offered dozens of different dates to choose from. He gave no explanation as to why he was unavailable and did not offer any alternative dates.

[145] Several dates and deadlines were set in preparation for this hearing. A deadline for the disclosure of the medical report was set for February 1, 2021, which Mr. Reid

did not meet. To accommodate him, the deadline was moved to April 6, 2021, and still, he did not disclose the report.

[146] The March 23, 2020, hearing had to be adjourned due to a global pandemic, but the April 6, 2021, hearing date had to be adjourned, at Mr. Reid's request, due to his lack of preparation.

[147] Finally, the date of June 16, 2021, was set, and the parties were advised that they could consider this date "cast in stone" (my words exactly) and that no further adjournment would be considered.

[148] At the videoconference test session on May 31, 2021, Mr. Reid did not attend with the appropriate mechanism in place (namely, the Zoom application), and the hearing facilitator had to spend 45 minutes with him to download the application and make sure that he was properly connected. None of the people Mr. Reid had listed as witnesses were present on May 31, 2021.

[149] When Mr. Reid was properly connected via the Zoom videoconferencing platform, I made it clear to both parties that this matter would proceed as scheduled on June 16, 2021, regardless of who attended or did not attend. He indicated to me that he understood, and he expressed hope that the doctors would attend. I reminded him that the Board had not yet received a request for a summons for any person.

[150] Ultimately, as previously explained, Mr. Reid did not attend the hearing on June 16, 2021, and did not provide a sufficient justification for doing so.

[151] Overall, Mr. Reid has been afforded a considerable degree of procedural fairness at every stage of these proceedings. The Supreme Court of Canada, in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, had occasion to consider the factors affecting the content of the duty of fairness. The majority decision reads as follows at paragraphs 21 and 22:

> *21 The existence of a duty of fairness, however, does not determine what requirements will be applicable in a given set of circumstances. As I wrote in* Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p.682, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case". All of the circumstances must be considered in order to determine the content of the duty of procedural fairness ….*

> *22 Although the duty of fairness is flexible and variable, and depends on an appreciation of the context of the particular statute and the rights affected, it is helpful to review the criteria that should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances. I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.*

[152] Specifically, with respect to participatory rights, the Supreme Court goes on to say, at paragraph 30, "At the heart of this analysis is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly."

[153] It is astonishing to note that over three-and-a-half years have now elapsed since Mr. Reid insisted upon a timely hearing into his capacity to enter into the settlement agreement. Taking into account the seven months dormancy due to the global COVID-19 pandemic, this amounts to over three years within which Mr. Reid did very little to move his matter forward. He has demonstrated a lack of diligence and has, at times, been obstructionist when it came to case management practices designed to move this matter along expeditiously.

[154] Procedural fairness must be extended to all parties. At every turn, the employer has been fully prepared to respond to Mr. Reid's motion, anticipating disclosure of a medical report. When the report never came, the employer objected, pointing to an increasing degree of difficulty in proceeding with the case, only to be overruled by the Board because of Mr. Reid's supposed desire to see the matter proceed.

[155] The employer was eager to participate in pre-hearing conferences and made itself available at every turn. The employer's witness came out of retirement to testify at the June 16, 2021, hearing. In according Mr. Reid every opportunity to present his case in this matter, I recognize the impact upon the other party to these proceedings.

[156] Nor can I ignore the public policy aspect to procedural fairness. Canadians have a right to an efficient legal process, balancing the rights of the parties to a fair and impartial hearing with the considerable costs of providing and maintaining the

necessary infrastructure for the administration of justice. Matters must be pursued with diligence and cannot be permitted to languish indefinitely. To do otherwise is contrary to the public interest.

[157] Mr. Reid has been afforded every opportunity to present his case fully and fairly. He simply has not done so.

VIII. Conclusion

[158] The hearing into Mr. Reid's capacity to enter into his settlement agreement is concluded, the motion is denied, and the Board's files will be closed.

[159] For these reasons, the Board makes the following order:

(The Order appears on the next page)

IX. Order

[160] The motion to quash the settlement agreement is denied.

[161] Exhibits E-1, Tab 1 and E-1, Tab 2 are sealed.

[162] Files 566-02-14180 and 568-02-00240 shall be closed.

September 14, 2021.

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