Date: 20220126

Files: 566-02-13816 and 13818

Citation: 2022 FPSLREB 5

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

BILLY GARDANIS

Grievor

and

DEPUTY HEAD
(Department of Employment and Social Development)

Respondent

Indexed as
Gardanis v. Deputy Head (Department of Employment and Social Development)

In the matter of individual grievances referred to adjudication

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

For the Grievor: Himself

For the Respondent: Adam Feldman, counsel

Decided on the basis of written submissions, filed November 18 and December 7, 2021, and January 4 and 5, 2022, and via videoconference, January 4 and 5, 2022.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] The grievor, Billy Gardanis, is employed by the Treasury Board ("the employer") as an integrity investigator with Employment and Social Development Canada (ESDC) at the program administrator (PM) 2 group and level in Vaughn, Ontario.

[2] ESDC is at times referred to as Service Canada.

[3] On June 10, 2015, the grievor filed a grievance, which stated as follows:

> …
>
> *Grievance details …*
>
> *I grieve the Employer's decision to demote me by refusing to honour my appointment to Senior Integrity Services Officer (PM-3) effective February 25, 2015, as communicated to me in correspondence the week of June 1, 2015.*
>
> *Date on which each act, omission or other matter giving rise to the grievance occurred …*
>
> *June 1, 2015*
>
> *Corrective action requested …*
>
> *1) That I immediately be placed in the position of Senior Integrity Services Officer (PM-3).*
>
> *2) That I be compensated for the difference in wages and benefits between my current position and that of Senior Integrity Services Officer (PM-3).*
>
> *3) Any other action required to make me whole.*
>
> …

[4] The grievor referred to adjudication the grievance filed on June 10, 2015, under both ss. 209(1)(a) and (b) of the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2), claiming a breach of the relevant collective agreement and discipline that gave rise to a termination, suspension, demotion, or financial penalty.

[5] On June 18, 2015, the grievor filed a grievance, which stated as follows:

> …
>
> *Grievance details …*
>
> *I grieve the discipline I received from my employer on June 18, 2015. This disciplinary action violates Article 17 of the Collective*

> *Agreement as well as any other Article of the Collective Agreement that may apply.*
>
> *Date on which each act, omission or other matter giving rise to the grievance occurred …*
>
> *June 18, 2015*
>
> *Corrective action requested …*
>
> *1) The immediate retraction of the disciplinary measure imposed upon me by my employer on June 18, 2015 ….*
>
> …

[6] The grievor also referred to adjudication the grievance filed on June 18, 2015, under both ss. 209(1)(a) and (b) of the *Public Service Labour Relations Act*, again claiming a breach of the relevant collective agreement and discipline that gave rise to a termination, suspension, demotion, or financial penalty.

[7] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

[8] Pursuant to Board policy, when a single grievance contains components that may fall under both ss. 209(1)(a) and (b) of the *Act*, the Board opens two distinct files, one for the grievance as it pertains to the alleged breach of the collective agreement (s. 209(1)(a)), and one for the grievance as it pertains to the alleged discipline that amounted to a termination of employment, suspension, demotion of employment, or financial penalty. The reason behind this duplicity is that grievances with respect to an alleged breach of a collective agreement may be pursued through adjudication only if the bargaining agent agrees to represent the grievor in the adjudication proceedings.

[9] The Board's registry opened two files for the grievance filed on June 10, 2015, file 566-02-13815 with respect to the alleged collective agreement breach, and file 566-02-13816 with respect to the alleged disciplinary demotion, and two files for the grievance filed on June 18, 2015, file 566-02-13817 with respect to the alleged

collective agreement breach, and file 566-02-13818 with respect to the written reprimand.

[10] In September of 2021, both grievances (all four files) were scheduled for a four-day hearing between January 4 and 7, 2022, to be heard by a single panel of the Board. On November 18, 2021, counsel for the employer wrote to the Board, objecting to its jurisdiction to hear the grievances, and requested a case management conference (CMC) to address pre-hearing issues. The Board contacted the parties' representatives to arrange a mutually convenient date for holding the CMC, and a date and time of December 9, 2021, at 2:00 p.m., were scheduled.

[11] From the dates of both grievances until just before the CMC, the grievor was represented by the Public Service Alliance of Canada ("the Alliance"). In an email to the Board's registry on November 30, 2021 (however, it was not copied to the Alliance), the grievor requested that there be no more correspondence with his Alliance representative and stated that he was in the process of obtaining new representation.

[12] By letter dated December 9, 2021, the Alliance advised the Board that it was withdrawing its representation of the grievor with respect to both grievances. As such, Board File Nos. 566-02-13815 and 13817, related to allegations of a breach of the relevant collective agreement, were closed.

[13] On December 16, 2021, the Board's registry wrote to the parties and advised them that the hearing days scheduled for January of 2022 would be used to hear evidence and argument solely with respect to the jurisdictional objections being raised by the employer.

[14] The employer objected to the Board's jurisdiction with respect to the grievance filed on June 10, 2015, on the basis that for there to be a demotion, the grievor would have had to have been in a higher paying position to have suffered a demotion to a lower paying position; the grievor was at all material times in a PM-2 position and remained in that position.

[15] The employer objected to the Board's jurisdiction with respect to the grievance filed on June 18, 2015, on the basis that it is not within the Board's jurisdiction under s. 209(1)(b) of the *Act*, as the discipline was a written reprimand and not a termination, demotion, suspension or financial penalty.

II. Summary of the evidence

[16] Only the grievor testified. In addition to documents filed with the Board as part of the grievance process, four exhibits were entered into evidence.

[17] Based on the grievor's testimony and the documents that form part of the Board's files, it appears that in the fall of 2014, the grievor participated in an internal appointment process, bearing selection process number 2014-CSD-IA-ONT-19200, for the position of Senior Integrity Services Officer (SISO) at the PM-3 group and level ("the SISO position").

[18] The grievor testified that he was advised that he was a successful candidate in the process, and in a telephone call with Jeff Fernback, the director of integrity services, he was offered the SISO position, which he stated he accepted. He also produced into evidence an email chain between himself and Mr. Fernback dated January 26, 2015, the emails in which state as follows:

> [The grievor to Mr. Fernback, at 09:08:]
>
> *Good morning Jeff,*
> *I hope all is well.*
> *I am sure things are quite busy.*
> *Just enquiring [sic] about the paperwork for the offer that I accepted.*
> *Thanks.*
>
> [Mr. Fernback to the grievor, at 10:34:]
>
> *Hi Billy … offer letter will come once NAPA has cleared. Looking at a Feb. 9th official start date.*

[19] "NAPA" is an acronym for a document used in the internal appointment (staffing) process known as a Notice of Appointment or Proposal of Appointment. A copy of the NAPA for the position the grievor had applied for and that set out that he was the successful candidate was entered into evidence. The relevant portions of the NAPA indicate that it was posted on Monday, March 16, 2015, identify the position at issue, identify the grievor as being the person proposed for appointment, and note that the classification level is PM-3, that the notification period was between February 25, 2015, and March 12, 2015, and that the complaint period closed on March 12, 2015.

[20] The NAPA also stated as follows:

…

Who May Complain

Area of Selection: *Persons employed at Employment and Social Development Canada (ESDC) occupying a position in the Ontario Region.*

If you are within the above ***Area of Selection*** *and participated in the advertised process, you may file a complaint as described below prior to the* ***Complaint Period Closing Date****.*

…

[Emphasis in the original]

[21] The grievor testified that he received an email on February 20, 2015, stating that the Notice of Consideration was posted. A copy of the email was not provided. The grievor then said that at this time, he needed to take some sick time, and that he had been advanced some sick leave credits. He said that he was scheduled to go on sick leave with pay (SLWP) on February 25, 2015. I was not provided any specifics of his sick leave bank and whether or not he actually departed on February 25 or on another day. He stated that he was advised by his doctor to be off for three weeks; however, he said that he was also advised that there would be training for the new SISO position that he was to be sent on, which was to be during the period of his sick leave.

[22] Entered into evidence was an email dated February 25, 2015, from Scott Schaefer, and sent to the grievor and several other persons (who I have been led to believe were also being appointed to SISO positions) for SISO training that was scheduled to take place between March 16 and 27, 2015. Mr. Schaefer was identified in the email as a business expertise consultant in Integrity Services. His job was not explained to me. The grievor indicated that he did not want to delay getting the training and that he was prepared to return to work from his sick leave to attend the training.

[23] February 25, 2015, was a Wednesday, and March 16 was a Monday. If the grievor was on SLWP from February 25, 2015, and returned to work on March 16, 2015, he would have missed two weeks and three days of work or was two days shy of the full three weeks that he said he was to be away for.

[24] The grievor testified that he was to return to work to start the training on March 16, 2015; however, he was met with two emails from Dale Boulianne. Mr. Boulianne is identified in the emails as the service manager of major investigations, Integrity

Operations, Ontario, for Service Canada. The specifics of his job were not made known to me. The two emails stated as follows:

> [From Mr. Boulianne to the grievor, at 07:46:]
>
> *Good AM Billy, welcome back…please be advised that you will not be attending the SISO training scheduled for the next two weeks. I will immediately follow this e-mail with another e-mail. The purpose of this second e-mail will indicate the reasons why you will not be attending the training at this time. For the present, please be advised that you will be working on ISI duties.…*
>
> [From Mr. Boulianne to the grievor, at 07:47:]
>
> *Hello Billy,*
>
> ***RE: Investigative Interview regarding your actions as they pertain to the Employment and Social Development Canada (ESDC) Code of Conduct on February 23rd, 2015.***
>
> *This is in reference to our expectations of you regarding your adherence to the ESDC Code of Conduct in the performance of your job. You are alleged to have violated the code of conduct by* [specific allegation not relevant to the matters to be determined]*. I will require your attendance for an investigative interview as follows:*
>
> *Date: March 17, 2015*
>
> *…*
>
> *The purpose of this interview is to gather facts in order for me to analyse, determine whether or not there was misconduct, and to make a decision regarding any disciplinary or administrative measures which may be warranted.…*
>
> *Your attendance is mandatory.…*
>
> *…*
>
> [Emphasis in the original]

[25] The grievor testified that he attended this interview and another interview that took place in April of 2015, apparently on April 30, based on material provided as part of the grievance process. He confirmed in cross-examination that he did not attend the training scheduled for the two weeks of March 16 through the 27, 2017, as set out in the February 25, 2015, email from Mr. Schaefer.

[26] The documents provided as part of the grievance file and sent to the Board as part of the grievance process indicate that as a result of the fact-finding meetings that took place on March 17 and April 30, 2015, the grievor was given a written reprimand

dated June 17, 2015. A copy of the written reprimand is in the Board's files, and it disclosed that the grievor acknowledged receipt of it on June 18, 2015. The specifics of the misconduct are not germane to the issue of jurisdiction before me, and as such, I will not set them out.

[27] The grievor confirmed that he did not receive a letter of offer for the SISO position. However, he maintained that he had been verbally offered the position by Mr. Fernback and that he had accepted it.

[28] After the grievor had testified and had been cross-examined and had the opportunity to carry out what would normally be called re-examination after counsel for the employer had cross-examined him, I asked him some questions. He confirmed to me that in September of 2015, the exact date not being clear, he was given a letter of offer for the SISO position effective September of 2015. He said that he did not accept the offer, on the advice of his bargaining agent. He said that he wanted the offer backdated, although he was not specific as to the exact date he wanted it backdated to. He said that the employer was prepared to backdate it two weeks, which was not acceptable to him. He then added that at the time, he was not thinking in the long-term but just day-to-day. He stated that he remained in his PM-2 position as of the hearing.

[29] Also found in the Board's file, and forming part of the documents in the grievance process, is the final-level grievance reply to the June 10, 2015, grievance, in which the grievor alleged that he was demoted. The final-level grievance reply is dated December 12, 2016, and is signed by Mary Ann Triggs, the assistant deputy minister for ESDC's Ontario Region. In denying the grievance, Ms. Triggs stated, in the fourth paragraph of that letter, the following: "It should also be noted that management provided you with an offer for a PM-03 acting appointment on June 18, 2015, as well as an indeterminate appointment to this same position on September 9, 2015, both of which you chose not to accept."

III. Summary of the arguments

[30] The grievor referred me to the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; "the *PSEA*"), *Amos v. Canada (Attorney General)*, 2011 FCA 38, *Chaudhary v. Deputy Head (Department of Health)*, 2013 PSLRB 160, *Godbout v. Treasury Board (Office of the Co-ordinator, Status of Women)*, 2016 PSLREB 5, and *Pugh v. Deputy Minister of Environment Canada*, 2007 PSST 3.

[31] The grievor submitted that the Board has jurisdiction over both grievances.

[32] The employer also referred me to the *PSEA* and to *Canada (Attorney General) v. Robitaille*, 2011 FC 1218, *Hassard v. Treasury Board (Correctional Service of Canada)*, 2014 PSLRB 32, and *Foreman v. Treasury Board (Indian and Northern Affairs Canada)*, 2003 PSSRB 73.

[33] The employer submitted that the Board is without jurisdiction to hear either grievance and requested that both grievances be dismissed.

IV. Reasons

[34] For the reasons that follow, I find that the Board is without jurisdiction to hear the grievances, and the grievances are dismissed.

A. The grievance in Board File No. 566-02-13816

[35] In Board File No. 566-02-13816, the grievance stated as follows:

> …
>
> *I grieve the Employer's decision to demote me by refusing to honour my appointment to Senior Integrity Services Officer (PM-3) effective February 25, 2015, as communicated to me in correspondence the week of June 1, 2015.*
>
> *Date on which each act, omission or other matter giving rise to the grievance occurred …*
>
> *June 1, 2015*
>
> …

[36] The essence of the grievor's argument was that he was appointed to the SISO position at the PM-3 group and level and that the employer's failure to follow through with the appointment amounted to either a disciplinary demotion or discipline that amounted to a financial penalty because he never received the PM-3 salary and remained being paid the PM-2 salary.

[37] The rules and laws governing employment in the federal public sector include legislation and regulations as well as contract law. Hiring for that portion of the public sector in which the employer is the Treasury Board is governed by the *PSEA*. While the term "appointment" is not defined in the *PSEA*, this term is, in short, for want of a better definition, used to refer to "being hired".

[38] Appointments are governed by Part 2 of the *PSEA*, and the Public Service Commission ("the Commission"), by virtue of s. 29(1) of the *PSEA*, has exclusive jurisdiction to make appointments to, or from within, the public service (as defined in the *PSEA*). Section 29(2) of the *PSEA* states that the Commission's authority under s. 29(1) of the *PSEA* "… may only be exercised at the request of the deputy head of the organization to which the appointment is to be made."

[39] The grievor was already an employee of the Treasury Board. He was working as an integrity investigator at the PM-2 group and level. Sometime in 2014, he participated in an internal selection process. An internal selection process is one that is for persons who are already employed by, as opposed to those who come from employment outside, the Treasury Board.

[40] Section 48 of the *PSEA* states as follows:

> ***48 (1)*** *After the assessment of candidates is completed in an internal appointment process, the Commission shall, in any manner that it determines, inform the following persons of the name of the person being considered for each appointment:*
>
> > ***(a)*** *in the case of an advertised internal appointment process, the persons in the area of selection determined under section 34 who participated in that process; and*
> >
> > ***(b)*** *in the case of a non-advertised internal appointment process, the persons in the area of selection determined under section 34.*
>
> ***(2)*** *For the purposes of internal appointment processes, the Commission shall fix a period, beginning when the persons are informed under subsection (1), during which appointments or proposals for appointment may not be made.*
>
> ***(3)*** *Following the period referred to in subsection (2), the Commission may appoint a person or propose a person for appointment, whether or not that person is the one previously considered, and the Commission shall so inform the persons who were advised under subsection (1).*

[41] Part 4 of the *PSEA* is entitled "Employment", and s. 56(1) states as follows:

> ***56 (1)*** *The appointment of a person from within that part of the public service to which the Commission has exclusive authority to make appointments takes effect on the date agreed to in writing by that person and the deputy head, regardless of the date of their agreement.*

[42] It appears clear and undisputed that the grievor was the person who appeared to be selected for the SISO position. This is evident, as the NAPA posted on March 16, 2015, states as much. Indeed, there is an email exchange between the grievor and Mr. Fernback in which they discuss the offer. The grievor emailed Mr. Fernback, asking about the paperwork. Mr. Fernback replied that the letter of offer would be coming after the NAPA had cleared. He then said that he was looking at a February 9 (2015) start date.

[43] However, this is not evidence that the grievor has been appointed to the position. Section 48(2) of the *PSEA* states that for the purposes of the internal appointment process, of which the SISO position process was one, the Commission shall fix a period, beginning when the persons are informed under s. 48(1), during which appointments or proposals for appointment may not be made. This is set out in the NAPA.

[44] The NAPA set out that the notification period was between February 25 and March 12, 2015. It is clear to me that as of the exchange of emails on January 25, 2015, the grievor had yet to be appointed and knew that this was so. It is clear because he asks about the paperwork. There is no doubt about what paperwork is being discussed because Mr. Fernback specifically refers to the offer. It is clear that no written offer had been sent to the grievor. While Mr. Fernback states that he was contemplating a start date of February 9, 2015, it could not happen until the "NAPA has cleared". We know that the NAPA period was from February 25 to March 12, 2015. The NAPA presented in evidence was posted on March 16, 2015. Coincidentally, it was posted the same day on which the grievor was informed that he was not going on the SISO training he had been invited to and was informed of an investigation into misconduct. The emails advising him of this were sent at 07:46 and 07:47, respectively.

[45] The grievor argued that s. 56(1) of the *PSEA* was fulfilled because there was an agreed start date in writing, namely, February 9, 2015, as mentioned in writing in the January 26, 2015, email from Mr. Fernback. I do not accept this argument. The email exchange on January 26, 2015, clearly indicated that an offer would be forthcoming after the NAPA. The date of February 9, 2015, was not a date agreed to by the parties. It was a merely a potential or possible date being contemplated by Mr. Fernback, based on the status of the process at the time. That is clear in the email exchange.

[46] The evidence further disclosed that the grievor remained in his PM-2 position, and there is no evidence that he carried out the duties and responsibilities of the SISO position. Indeed, the evidence disclosed that the grievor remained in his PM-2 position and thus was doing the PM-2 duties.

[47] Further, in the wording of his grievance, he acknowledged that he was not appointed, as he said the following in his June 10, 2015, grievance: "… refusing to honour my appointment to Senior Integrity Services Officer (PM-3) effective February 25, 2015 …". The grievor testified that on or about February 25, 2015, he left work and went on SLWP until he returned to the office on March 16, 2015. There is no evidence that the grievor was appointed effective February 25, 2015. The only reference to February 25, 2015, is found in the NAPA as the date that the notification period, as referenced in s. 48(2) of the *PSEA*, was to commence. There is no evidence that the employer and grievor had agreed that this was the date of his appointment commencing.

[48] Also, in his grievance, the grievor states that it was on June 1, 2015, in correspondence he received that he was informed that the employer would not be honouring his appointment to the SISO position. This correspondence was not provided into evidence; nor did the grievor testify as to what exactly happened on June 1 or what was in the June 1 correspondence. If he had been appointed effective February 9 or February 25, 2015, this would have occurred long before June 1, 2015, and there would be some evidence of it somewhere. There is not any documentation whatsoever.

[49] Further, the evidence disclosed that the employer did make the grievor an offer of an appointment to the SISO position. The grievor testified to this, stating that it occurred in September of 2015. He then stated that he turned down that appointment. In his response to me, he said he did so on the advice of his bargaining agent representative. When I completed my questioning of the grievor, I asked both the employer's counsel and the grievor if they had any questions, or in the grievor's case, any further evidence that arose out of my questions. The grievor then stated that he turned down the appointment to the SISO position because he was not thinking long-term, just day-to-day.

[50] In addition, in the final-level grievance reply issued by Ms. Triggs, she not only stated that the grievor was offered the full-time indeterminate SISO position in September of 2015 but also that he had been offered an acting PM-3 position on June 18, 2015. This, coincidentally, was the date on which he was given his written reprimand.

[51] Based on all the evidence before me, I am satisfied that there was no appointment of the grievor, as defined by the *PSEA*, in the period between January of 2015 and the date of filing of the grievance, to the SISO position. If the grievor was not in the SISO position (which he alleged), he was in his integrity investigator position at the PM-2 group and level.

[52] "Demotion" is used in ss. 12(1)(c)(d) and (e) of the *Financial Administration Act* (R.S.C. 1985, c. F-11), and it refers to a demotion to a position at a lower maximum rate of pay. It is clear that the grievor understood that to be what "demotion" meant, as he used that term in the course of his grievance, in the section identified for him to set out the corrective action he was seeking. In that section, he stated that he was seeking the difference in pay between the lower maximum paying PM-2 position and the higher maximum paying PM-3 position, the SISO position.

[53] As the grievor was never appointed to the higher-paying PM-3 SISO position, and as he remained in his PM-2 position, with no loss of pay, he could not have been demoted, let alone demoted for disciplinary purposes. If there is no demotion, let alone a disciplinary demotion, the Board does not have jurisdiction.

[54] One of the main tenets of the oral argument the grievor advanced was that "words must mean things". In this respect, the grievor referred me to jurisprudence, including *Amos*, *Chaudhary*, and *Godbout*. These are all decisions that deal with the negotiation of settlement agreements. The law with respect to settlement agreements is not the same as that with respect to the appointment process.

B. The grievance in Board File No. 566-02-13818

[55] In Board File No. 566-02-13818, the grievor grieved the disciplinary action imposed on him on June 18, 2015, which was a written reprimand.

[56] The grievor argued that there were grounds for the written reprimand to be grieved due to the procedures taken by the employer, resulting in the written

reprimand being unfair, and that it violated his right to due process and denied his right to respond. The grievor further argued that ESDC's guide for conducting an administrative investigation provides that the employee should be given time to review the final investigation report before management renders its decision and that the employee should be permitted to submit a written response to the investigation report. He further argued that the Treasury Board states that an investigation report must be provided to the employee under investigation. He argued that his representative at the time asked to see the disciplinary investigation report or finding of the evidence substantiating the allegations against him and that the employer refused.

[57] I was not provided with a copy of ESDC's guide for conducting an administrative investigation or the Treasury Board policy document the grievor referred to. However, this is largely irrelevant, as the grievor's arguments address his belief that there were grounds to grieve the written reprimand.

[58] The Board derives its jurisdiction from the *Act*. Section 208 of the *Act* sets out the parameters for the presentation of an individual grievance by an employee. Section 208(1)(b) states that an employee is entitled to present a grievance if he or she feels aggrieved as a result of any occurrence or matter affecting his or her terms and conditions of employment. Without getting into whether or not the grievor was entitled to file a grievance about his written reprimand, his ability to present a grievance under s. 208 is not what is at issue. What is at issue is whether or not the grievance he filed against his written reprimand is adjudicable by the Board.

[59] Section 209 of the *Act* sets out the jurisdiction of the Board with respect to individual grievances that might have been presented under s. 208. Section 209(1) states as follows:

> ***209 (1)*** *An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> ***(a)*** *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*
>
> ***(b)*** *a disciplinary action resulting in termination, demotion, suspension or financial penalty ….*

[60] Section 209 of the *Act* clearly sets out that Parliament has decided that only grievances disputing the most severe disciplinary actions may be referred to the Board for jurisdiction. This is exactly what the Federal Court states as follows at paragraphs 25 through 28 of *Robitaille*:

> *[25] Section 208 of the PSLRA allows an employee who feels aggrieved to present a grievance against any matter affecting his or her conditions of employment.*
>
> *[26] I agree with the applicant that any grievance presented pursuant to section 208 of the PSLRA is not necessarily arbitrable. Parliament specified at section 209 of the PSLRA that only grievances related to the matters in paragraphs 209(1)*(a)*, (*b*), (*c*) and (*d*) may be referred to adjudication.*
>
> *[27] More specifically, regarding disciplinary actions, Parliament decided that only grievances disputing the most severe disciplinary actions may be referred to adjudication. Under paragraph 209(1)*(b*) of the PSLRA, only a grievance against a disciplinary action resulting in termination, demotion, suspension or financial penalty may be referred to adjudication.*
>
> *[28] A written reprimand, though a disciplinary action, does not result in the consequences listed in paragraph 209(1)*(b*) of the PSLRA and, consequently, a grievance related to a written reprimand cannot be referred to adjudication.…*

[61] As this grievance is against the written reprimand given to the grievor on June 18, 2015, the Board is without jurisdiction.

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

(The Order appears on the next page)

V. Order

[63] The Board does not have jurisdiction to hear the grievances.

[64] The grievances are denied.

January 26, 2022.

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