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

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

MARY-ANN CRANTON

Grievor

and

TREASURY BOARD
(Royal Canadian Mounted Police)

Employer

Indexed as
Cranton v. Treasury Board (Royal Canadian Mounted Police)

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

Before: Amélie Lavictoire, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Lisa Greenspoon, Public Service Alliance of Canada

For the Employer: John Mendonça, analyst, Treasury Board Secretariat

Decided on the basis of written submissions,
filed January 12 and 26, 2022.

REASONS FOR DECISION

I. Overview

[1] Mary-Ann Cranton ("the grievor") is a civilian employee of the Royal Canadian Mounted Police ("RCMP"). On December 2, 2021, she referred a grievance to adjudication pursuant to s. 209(1)(a) of the *Federal Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The grievance challenges what she describes as her employer's decision to change the nature of the paid leave she was entitled to following an injury sustained in the workplace and the method for recording that leave when it was taken.

[2] On January 12, 2022, the Treasury Board ("the respondent"), the grievor's legal employer, made a motion to have the grievance dismissed as untimely. According to the respondent, the grievance was presented to the first level of the internal grievance process beyond the 25-day time limit set out in clause 18.15 of the Program and Administrative Services collective agreement which expired on June 20, 2018 ("the collective agreement") and was dismissed for that reason at all levels of the grievance process. In its brief written submissions in support of its objection, the respondent states that the Federal Public Sector Labour Relations and Employment Board ("the Board") does not have jurisdiction to hear the grievance as it is untimely.

[3] The grievor disputes the respondent's timeliness allegation. In the alternative, she requests an extension of time pursuant to s. 61 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"). It is the Board's practice to open a new file upon receipt of application for an extension of time. By inadvertence, a new file was not opened in this case. Accordingly, I have ordered that a file be opened for the grievor's request for an extension of time.

[4] After it received the grievor's written submissions on timeliness, including her request for an extension of time, the Board informed the parties that it intended to decide the objection and the request for an extension of time on the basis of written submissions. Under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board may decide any matter before it without holding an oral hearing.

[5] The Board invited the parties to make additional written submissions, and it set a schedule for them. Neither party provided the Board with additional written submissions. For this reason, the Board does not have the benefit of the respondent's position or arguments with respect to the grievor's request for an extension of time. This places the Board in the difficult position of making a decision with respect the grievor's request based solely on her submissions. Despite that, I have concluded that the Board's file contains sufficient information to allow me to render a decision with respect to the respondent's objection and the grievor's request.

[6] I am of the opinion that the grievance was presented beyond the 25-day time period set out in the collective agreement and that it is untimely. In light of the grievor's submissions in support of her request for an extension of time, I am of the opinion that it is not in the interest of fairness to grant an extension pursuant to s. 61(b) of the *Regulations*.

II. The grievance referred to adjudication

[7] The grievor is a detachment service assistant with the RCMP. The grievance referred to the Board challenges the respondent's decision to no longer allow her "… to take sick time as needed without needing to enter the time in the HRMS [Human Resources Management System] …", as it had allowed her to do in the past.

[8] For the purposes making a decision with respect to the objection and request for an extension of time at this preliminary stage of the proceedings, I have taken the grievor's factual allegations as true. She submits that she injured herself in the workplace. The date of that injury is unknown. She submits that she reported the incident to management and that she completed the forms necessary to allow the respondent to report the incident and initiate a workers' compensation board ("WCB") claim. She alleges that the respondent failed to report the incident and file the paperwork, resulting in her being barred from filing a WCB claim due to the respondent's negligence. For several years after her injury, the respondent allowed her to take injury-on-duty leave rather than requiring her to take sick leave. The injury-on-duty leave taken was not entered in the HRMS.

[9] As early as September 2016, the grievor was made aware that the respondent wished that she cease submitting her leave as injury-on-duty leave and to submit it as sick leave.

[10] On February 7, 2018, the grievor attended a meeting, during which she was informed that from then on, she was required to submit her leave as sick leave and that she would be subject to disciplinary action if she did not comply. She emailed her manager and requested the decision in writing.

[11] On February 9, 2018, the grievor received the following reply from her supervisor:

> *I recognize your frustration, I really do. What it boils down to though, is I don't have the authority to give you free time off every day, regardless of how deserving I feel you are. If the RCMP did not do what they needed to do, and you're entitled to some sort of accommodation or compensation, I sincerely hope you get it. However, it's not going to be from anyone at my level.*

[12] The grievor submits that after she received her supervisor's written reply, she took steps to identify the member of management with the next level of decision-making authority, so that she could make her request to someone with the authority to grant it. On March 5, 2018, she emailed that individual, requesting permission to continue to claim injury-on-duty leave.

[13] On March 29, 2018, having received no response and "… worried that if she waited much longer [for a response], she would be out of time to file her grievance", the grievor filed a grievance.

[14] The respondent rejected the grievance for timeliness at all levels of the grievance process. It submits that as of February 7, 2018, the grievor was aware of the action that gave rise to her grievance. Pursuant to clause 18.15 of the collective agreement, she had 25 days from that date to file her grievance. It was filed weeks beyond the time limit in the collective agreement.

[15] The grievor argues that her grievance is timely if it is assessed against the date on which she sent her request to a member of management with the authority to grant it; that is, March 5, 2018. She submits that once her supervisor informed her that he did not have the authority to grant her accommodation request, she acted reasonably by addressing her request to an individual with the required level of authority. She was diligent in her efforts to identify this individual and was justified waiting a reasonable amount of time for a response.

[16] Were the Board to find that the grievance is untimely, the grievor requests an extension of time pursuant to s. 61 of the *Regulations*. She argues that her grievance has merit, she has been diligent in enforcing her rights, and she was entitled to attempt to obtain a definitive answer from the respondent before presenting her grievance. The delay of more than two weeks presenting her grievance was attributable to her efforts to obtain a decision from a manager with the authority to grant her request. Furthermore, she submits that the injustice to her if her grievance is not allowed to proceed to adjudication would outweigh the prejudice to the respondent if an extension of time is granted. The respondent would not be disadvantaged with respect to its ability to present its argument or to call witnesses.

[17] As previously mentioned, the respondent did not make written submissions with respect to the grievor's request for an extension of time.

III. Analysis

A. Timeliness

[18] The grievor invites the Board to interpret the facts of this case in a manner similar to the interpretation it adopted in *Chalmers v. Treasury Board (Department of Fisheries and Oceans)*, 2021 FPSLREB 63, and to conclude that the grievance is timely.

[19] The present case can be distinguished from *Chalmers*.

[20] In *Chalmers*, the grievor asked her employer to reconsider an earlier decision with respect to her eligibility for parental leave in light of a significant new development. She had also been notified that the employer was awaiting an official interpretation of the collective agreement, on which it would rely for its reconsideration.

[21] Before the Board, the parties in that case disagreed as to the action that triggered the grievance, and a timeliness objection was raised. The employer took the position that the 25-day period for presenting a grievance had begun to run as soon as it had signalled to the grievor that it did not believe that she was entitled to parental leave. The grievor argued that the time had begun to run only on the date on which she was notified of the employer's definitive answer; that is, after it received a collective-agreement interpretation from the Treasury Board.

[22] The Board concluded that it had been reasonable for the grievor to wait for a definitive answer from her employer before presenting a grievance because the employer's position could have changed. That conclusion was fact-specific and rested on evidence of a significant new development recently brought to the employer's attention as well as on the Board's finding that the employer had led the grievor to believe that it was awaiting a definitive interpretation of the collective agreement, which was capable of influencing its decision.

[23] Unlike in *Chalmers*, in the present case, there were no ongoing efforts by the employer to review and reconsider an earlier position. Nor can it reasonably be said that the grievor was awaiting a definitive answer from her employer. She might have disagreed with it, but she had received the respondent's clear and definitive decision on February 7, 2018. Although her supervisor indicated that he did not have the authority to grant her accommodation request, his response cannot be said to have created a legitimate expectation that a different decision was or could be forthcoming were the grievor's request addressed to an individual with more authority.

[24] In this case, the grievor cannot be said to have had an expectation similar to the one found to exist in *Chalmers*. Dissatisfied with the respondent's decision and the response received from her supervisor, the grievor decided to delay filing a grievance while she sought a decision maker with greater authority. Her written submissions indicate that she was aware of the importance of respecting the timelines for presenting a grievance. Her decision to delay and pursue other avenues resulted in her filing her grievance more than 2 weeks beyond the 25-day limit.

[25] I do not accept the grievor's invitation to rely on the analysis set out in *Chalmers* to use March 5, 2018, as the starting point for calculating the 25-day period and for making a determination with respect to timeliness.

[26] The grievor was informed of the respondent's decision with respect to her leave eligibility on February 7, 2018. That decision was definitive and effective immediately. It is the source of the grievance currently before the Board. The 25-day time limit set out in the collective agreement must be calculated as of February 7, 2018. Had the grievor wished to pursue efforts aimed at obtaining a favourable decision from another decision maker employed by the respondent, a wiser course of action would have been to first secure her rights by filing a grievance.

[27] Grievors cannot take it upon themselves to disregard the timelines set out in a collective agreement to seek a decision from another decision maker. Accepting that position would be contrary to the collective agreement and the spirit and intent of the *Act*.

[28] The *raison d'être* of the internal grievance process set out in the collective agreement is to provide a mechanism by which a challenge to an employer's decision or action is submitted for review and reconsideration by individuals of increasing authority. Had she submitted her grievance within 25 days of being informed of the respondent's decision of February 7, 2018, the grievor would have obtained what she sought, decisions with respect to her accommodation request from individuals with increasing levels of authority. Unfortunately, she did not.

[29] The grievance is untimely.

B. The request for an extension of time

[30] Pursuant to s. 61(b) of the *Regulations*, the Board may, in the interest of fairness, extend the time provided for in a grievance procedure contained in a collective agreement for the presentation of a grievance at any level of the grievance process.

[31] The 25-day time limit provided for in the collective agreement was negotiated by the parties to that agreement. Although s. 61(b) of the *Regulations* allows the Board to extend that time limit, extending time limits set out in a collective agreement should remain the exception. Such requests are allowed sparingly in order to not destabilize the labour relations scheme created by the *Act* and the agreement between the parties (see *Cloutier v. Treasury Board (Department of Citizenship and Immigration)*, 2008 PSLRB 31).

[32] *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, sets out criteria that guide the Board when it addresses requests made pursuant to s. 61 of the *Regulations*. Those criteria are the following:

- clear, cogent and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the grievor;

- balancing the injustice to the grievor against the prejudice to the respondent in granting an extension; and
- the grievance's chance of success.

[33] The criteria need not all have equal weight when deciding whether the Board should exercise its discretion and grant an extension of time. They can be applied in a flexible manner, based on the facts and in the interest of fairness. The circumstances of a case determine the weight to be given to any one of the five criteria.

[34] The first criterion is an important starting point. Seeing as an extension of time is an exception to the collective agreement that the parties concluded, it would be a rare case in which it would be in the interest of fairness to grant an extension in the absence of a clear, cogent, and compelling reason for the delay.

[35] The grievor has provided a reason for the delay. However, the reason is not cogent and compelling. She does not allege an error, an oversight, or ignorance of the process. Her written submissions indicate that she knew that she was bound by a time limit to present her grievance. Rather, the delay was due to her decision to deliberately delay filing a grievance while she sought a decision maker with greater authority.

[36] The circumstances did not justify such a course of action. As previously explained, I am unable to conclude that it was reasonable for her to delay filing her grievance; nor can I conclude that her supervisor's response created a legitimate expectation that a different decision was or could be forthcoming were her request addressed to an individual with more authority.

[37] In the circumstances of this case, holding that the grievor's reason is cogent and compelling for the purposes of granting an extension of time would condone a deliberate circumvention of the grievance process negotiated by the parties. It would also be contrary to the legislative objective of ensuring the efficient resolution of disputes about terms and conditions of employment, as set out in the preamble to the *Act*.

[38] The *Schenkman* criteria of due diligence is also not favourable to the grievor.

[39] On the factual allegations that the grievor made, it is impossible for me to conclude that she acted with due diligence. She knew that there was a time limit for filing a grievance and does not allege that she was unaware that it was 25 days.

[40] Instead of filing her grievance shortly after the meeting during which she was informed of the respondent's decision and thus protecting her rights, she sought another decision maker. There is nothing to indicate that she promptly reached out to her bargaining agent for advice as to how to proceed. It is noteworthy that the grievor took 18 business days to identify the decision maker to whom she would send her request for reconsideration and accommodation. She has provided no explanation as to why it took her 18 days to identify an individual with greater decision-making authority. After communicating with that individual, she waited an additional 17 business days for a response before filing her grievance. Only when it became clear to her that a decision might not be forthcoming, and she became worried that she would be out of time, did she file her grievance.

[41] She cannot be said to have been diligent in exercising her rights pursuant to the grievance process set out in the collective agreement. It is a well-recognized principle of labour relations that when a formal grievance process exists and is subject to prescriptive extinction, a party should secure his or her formal right by presenting a grievance before pursuing alternate or informal routes to resolve a dispute (see *Pomerleau v. Treasury Board (Canadian International Development Agency)*, 2005 PSLRB 148).

[42] Turning to the remaining *Schenkman* criteria, I am of the opinion that the length of the delay is not insurmountable. It is of slightly more than two weeks.

[43] It is not possible for me, at this stage of the proceedings, to draw a conclusion with respect to the grievance's chance of success.

[44] The prejudice to the grievor would undoubtedly be greater than the prejudice to the respondent were the extension of time denied. However, in the circumstances of this case, the reason for the delay and the lack of due diligence on the part of the grievor tip the balance to her disadvantage.

[45] In weighing the *Shenkman* criteria in this case, I believe that it is not in the interest of fairness to extend the time provided for in the collective agreement for

presenting a grievance. The grievor did not present a clear, cogent, and compelling reason for the delay. Her lack of due diligence pursuing the grievance is an additional factor that leads to me to conclude that it is not in the interest of fairness to grant an extension of time.

[46] I grant the employer's objection based on the delay and dismiss the grievor's application for an extension of time.

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

(The Order appears on the next page)

IV. Order

[48] The respondent's timeliness objection is allowed.

[49] The grievor's application for an extension of time is dismissed.

[50] The grievance file bearing the number 566-02-43847 is ordered closed.

May 16, 2022.

Amélie Lavictoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board