Date: 20231107

File: 566-34-38871

Citation: 2023 FPSLREB 103

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

REBECCA LAWRENCE

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Lawrence v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Simon Cott

For the Employer: Patrick Turcot

Decided on the basis of written submissions, filed July 24 and 26, and August 11, 2023.

REASONS FOR DECISION

I. Preliminary objection

[1] On April 21, 2015, Rebecca Lawrence ("the grievor"), an AU-01 appeals officer with the Canada Revenue Agency (CRA or "the employer"), filed a grievance alleging that she suffered discrimination on the basis of health and family related reasons, in contravention of clause 42.01 of the collective agreement between the CRA and the Professional Institute of the Public Service of Canada that expired on December 21, 2014 ("the collective agreement").

[2] The grievance was referred to adjudication on July 26, 2018. Notice was provided to the Canadian Human Rights Commission.

[3] As a preliminary matter, the employer objected that the grievance was untimely as it was filed more than 25 days after the grievor had knowledge of the events that led to it. Alternatively, the employer stated that the matter was not grievable and that the Federal Public Sector Labour Relations and Employment Board ("the Board") has no authority to proceed with it.

[4] For the reasons that follow, I have determined that the grievance is untimely. Accordingly, the Board has no jurisdiction over it, and it cannot proceed to adjudication.

II. Background

[5] The grievor participated in appointment process 2013-1241-PAC-2001-2010 for promotion to the AU-03 group and level. After being partially assessed, candidates received an opportunity to act in an AU-03 position commencing April 1, 2014. During that period, their performance was evaluated to determine their qualification and eligibility for appointment.

[6] On February 12, 2015, the employer announced 11 indeterminate appointments to AU-03 positions from the candidate pool. It advised the remaining candidates, including the grievor, that they would remain eligible for consideration for future vacancies for the duration of the pool that was to expire on March 31, 2015. The notification provided details and time limits for CRA's staffing recourse process.

[7] The grievor responded to the notification by requesting individual feedback, which was a step in CRA's staffing recourse process. She withdrew the request on February 20, 2015, stating her understanding that there had been insufficient time to observe her performance in the AU-03 position. According to the employer's submission, she was absent for 23 weeks of the 1-year evaluation period.

[8] The grievor did not receive an indeterminate appointment before March 31, 2015, and she returned to her substantive position.

[9] The grievor filed this grievance on April 21, 2015. It stated this:

> *I and other candidates of selection pool 2013-1241-PAC-2001-2010, who did not possess investigation experience, started acting assignment [sic] on April 01, 2014. On February 12, 2015, all other candidates were permanently appointed (except one other on maternity leave). My assignment was terminated without extension on March 31, 2015. I was told that I was not appointed because I took leaves and did not put sufficient working hours on the position for my employer to observe my performance. My employer ignored the fact that I took leaves because of health and family related reasons. It is my view that the Employer discriminated against me on the basis of disability and family status, in contravention of article 42.01, by not appointing me or extending my assignment.*

[10] At all levels, the employer denied the grievance on the basis that it was not filed within the time limits stipulated in clause 34.11 of the collective agreement, which provided as follows:

34.11 *An employee may present a grievance to the first (1st) level of the procedure in the manner prescribed in clause 34.06, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to the grievance.*	***34.11*** *Au premier (1er) palier de la procédure, l'employé-e peut présenter un grief de la manière prescrite au paragraphe 34.06 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il ou elle est notifié, oralement ou par écrit, ou prend connaissance, pour la première fois, de l'action ou des circonstances donnant lieu au grief.*

III. Summary of the arguments

A. For the employer

[11] The employer argues that the Board is not properly seized of the matter as the grievance was initiated 67 days after February 12, 2015, the date on which the appointments were announced and the grievor knew that she had not been selected for appointment. This fell well outside the time limit stipulated in clause 34.11 of the collective agreement. The employer maintained this position throughout the grievance process.

[12] Time limits are meant to be respected and should be extended only in exceptional circumstances, depending on the facts of each case. (See *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93 at para. 77.)

[13] No compelling reasons were presented to the Board to extend additional time to the grievor in this case.

[14] Further, pursuant to s. 54(1) of the *Canada Revenue Agency Act* (S.C. 1999, c. 17; "the *CRA Act*"), recourse in staffing matters is available through individual feedback, a decision review, and an independent third-party review. In accordance with s. 54(2) of the *CRA Act*, staffing cannot be dealt with under the collective agreement's provisions.

[15] In addition, s. 208(2) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *FPSLRA*") prevents an employee from presenting an individual grievance when redress is provided elsewhere under federal legislation, other than the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; "the *CHRA*"). Finally, clause 34.07(2) of the collective agreement states that an individual grievance may not be presented when an administrative procedure for redress is provided under any federal legislation, other than the *CHRA*.

[16] The employer concluded its arguments by stating that the grievance was untimely and that no basis for an extension of time is warranted. Even if it were timely, the grievor did not exercise the correct recourse, which was the employer's internal recourse process. The Board should deny the grievance for want of jurisdiction.

B. For the grievor

[17] The grievor notes that until the pool lapsed on March 31, 2015, she did not know with certainty that she would not be appointed to an indeterminate AU-03 position. In support, she relies on the notification of February 12, 2015, which advised her that she remained eligible for consideration until the pool expired.

[18] According to the grievor, until she knew that others had been appointed and could be certain that she would not be, she could not file a grievance. Those two things coincided only on March 31, 2015, when the pool expired. Her grievance of April 21, 2015, was within 25 days of that occurrence, and it must be considered timely.

[19] The grievor further argues that the decision review and independent third-party review processes are so narrowly circumscribed that they could not possibly address the breadth of the matter expressed in the grievance. Additionally, she is now beyond the allowable time to refer the matter to those processes.

IV. Analysis

[20] For the reasons that follow, I have determined that the Board is without jurisdiction to consider this matter as the grievance was not initiated within the prescribed time limit.

[21] The parties' submissions persuade me on the balance of probabilities that the grievor knew that she had not been selected for appointment as early as February 12, 2015, when she received notification in writing that stated so.

[22] The parties provided the Board with a copy of the February 12, 2015, notification. It sets out in detail the steps and time limits for an individual to engage the internal staffing recourse process. The grievor responded by using the employer's staffing recourse process to ask for individual feedback. She withdrew the request on February 20, 2015, stating that she knew that the decision was grounded in the insufficient time she had accumulated in the AU-03 position.

[23] I conclude then that when the appointments were announced on February 12, 2015, the grievor knew that the employer had not selected her for appointment. By February 20, 2015, she knew the reasons for which she was not selected.

[24] Nonetheless, she elected to wait and see whether she would be appointed to an AU-03 position by March 31, 2015. She did so at her peril, with the result that by April 21, 2015, her grievance was significantly beyond the 25 days that were allowed by the collective agreement, and it could not be considered timely.

[25] It does not assist the grievor to rely on the words in the notification indicating that she remained eligible for consideration for appointment until March 31, 2015. They suggested only that the employer could have had resort to the pool of candidates for additional appointments if it so chose. The words did not serve to extend the time limit for filing a grievance concerning the decision of February 12, 2015.

[26] While the grievor suggested that she had ongoing discussions with the employer and a continuing expectation that she might be appointed to an AU-03 position, ongoing discussions do not suspend the time limit for filing a grievance (see *Tuplin v. Canada Revenue Agency*, 2021 FPSLREB 29).

[27] The Board has consistently held that stated time limits are to be observed. They will be extended only in exceptional circumstances, when doing so would be in the interest of fairness, in line with the criteria enumerated in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1. In the present case, there is no request for an extension of time.

[28] In making this finding that the grievance was untimely, I note that the employer raised its objection in writing with the Board on August 16, 2018, after receiving notice that the grievance had been referred to adjudication. A review of the grievance replies confirms that the employer uniformly denied the grievance at each level on the basis of timeliness. Accordingly, I find that the employer discharged the obligations set out in s. 95 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79).

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

(The Order appears on the next page)

V. Order

[30] The objection to the timeliness of the grievance is upheld.

[31] The grievance is denied.

November 7, 2023.

Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board