Date: 20240516

File: 568-02-48278
XR: 566-02-45649

Citation: 2024 FPSLREB 69

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

DONNA BROWN

Applicant

and

DEPUTY HEAD
(Department of National Defence)

Respondent

Indexed as
Brown v. Deputy Head (Department of National Defence)

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

Before: Caroline Engmann, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Sandra Gaballa, Public Service Alliance of Canada

For the Respondent: Erin Saso, Treasury Board of Canada Secretariat

Decided on the basis of written submissions, filed October 12, 2022, and July 11, November 9, and December 12, 2023.

REASONS FOR DECISION

I. Preliminary objection and application for an extension of time to file an individual grievance

[1] On September 7, 2022, Donna Brown ("the applicant") referred a grievance to adjudication under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"). The Department of National Defence ("the respondent") objected to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board", which in this decision refers to the current Board and any of its predecessors) to hear the grievance on the basis that it is untimely. The applicant asserted that the grievance is timely as it pertains to an ongoing failure of the respondent to abide by the relevant collective agreement and therefore is a continuing grievance. In the alternative, she applied for an extension of time under s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*") to file her grievance.

[2] I have been appointed as a panel of the Board to determine the respondent's preliminary objection and the application for an extension of time. Under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), I am satisfied that I can determine both matters based on the parties' written representations.

[3] I need not determine whether the grievance is continuing. For the reasons outlined in this decision, I am satisfied that it is in the interest of fairness and justice for the Board to exercise its discretion under s. 61(b) of the *Regulations* and grant the applicant an extension of time to file her grievance.

II. Summary of the relevant facts

A. Procedural steps

[4] On March 14, 2022, the applicant filed a grievance against the respondent's policy on mandatory COVID-19 vaccination for employees that required them to attest to their vaccination status. Failing to comply with the policy would result in an employee being placed on administrative leave without pay. The applicant grieved that placing her on administrative leave without pay constituted an "unlawful dismissal" and requested that she "be allowed to work attestation free."

[5] On August 29, 2022, the respondent denied the grievance at the final level of the grievance procedure on the grounds of timeliness and on the merits.

[6] On September 7, 2022, the applicant referred the grievance to adjudication. On October 12, 2022, the respondent raised a preliminary jurisdictional objection on the grounds of timeliness. The applicant then filed a request for an extension of time. The Board solicited the parties' submissions on the preliminary objection, and the request for an extension of time. The submissions process concluded on December 12, 2023.

B. Facts

[7] The applicant works as a kitchen aid classified at the FOS-02 group and level in the respondent's Personnel Support Service Branch at the 5th Canadian Division Support Base Gagetown in Oromocto, New Brunswick.

[8] The applicant's employment is covered by the collective agreement between the Treasury Board and the Public Service Alliance of Canada ("the bargaining agent") for the Operational Services group with the expiry date of August 4, 2021 ("the collective agreement"). The collective agreement specifies the timelines for filing grievances and provides as follows:

…	[…]
18.15 *A grievor may present a grievance to the first level of the procedure in the manner prescribed in clause 18.08, not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance. The Employer may present a policy grievance in the manner prescribed in clause 18.04 not later than the twenty-fifth (25th) day after the date on which the Employer is notified orally or in writing or on which the Employer first becomes aware of the action or circumstances giving rise to the policy grievance.*	***18.15*** *Un employé-e s'estimant lésé peut présenter un grief au premier palier de la procédure de la manière prescrite par la clause 18.08 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est informé ou prend connaissance de l'action ou des circonstances donnant lieu au grief. L'employeur peut présenter un grief de principe de la manière prescrite par la clause 18.04 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est informé de vive voix ou par écrit ou à laquelle il prend connaissance de l'action ou des circonstances donnant lieu au grief de principe.*
…	[…]

[9] Effective October 6, 2021, the respondent implemented its *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("the Policy"), requiring that all employees had to be vaccinated and that they had to attest to their vaccination status as of a certain date; in the applicant's case, it was by October 29, 2021.

[10] On November 1, 2021, the respondent wrote to the applicant as follows:

> …
>
> *… you were required to attest to your vaccination status by October 29, 2021.*
>
> *To date, you have not yet complied with the Policy; therefore, you are required to attend a training session on the benefits of COVID-19 vaccination and receive your first dose prior to November 15, 2021. Should you not comply with the Policy by November 15, 2021, you will be placed on administrative leave without pay until such time as you comply with the Policy.*
>
> …

[11] By letter dated November 12, 2021, the respondent notified the applicant that effective November 15, 2021, she would be placed on administrative leave without pay until such time as she complied with the Policy. The respondent also stated that it would review its decision should the applicant's situation change. This letter stated as follows:

> …
>
> *On 20 October 2021 you were notified that the Government of Canada was implementing the* Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP *(the* Policy*) which came into effect on October 6, 2021. As you have not attested to your vaccination status, you are not compliant with the* Policy *and will be placed on administrative leave without pay effective 15 November 21 until such time as you comply with the* Policy*.*
>
> *I will review this decision should your situation change.*
>
> *Should you have any questions regarding the process, please feel free to contact LCdr Daniel Curtis at* [redacted]*.*
>
> *Please note that the Employee Assistance Program is available to assist you at any time and can be reached at* [redacted]*.*
>
> *Sincerely,*
>
> [signed: the commanding officer]

[12] In March 2022, the bargaining agent filed a policy grievance related to the continuation of the forced placement on a leave without pay for unvaccinated employees.

[13] The applicant filed her grievance on March 14, 2022.

III. Summary of the parties' arguments

[14] Both parties relied upon the criteria outlined in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, as to the Board's discretion to extend time limits under s. 61(b) of the *Regulations*.

A. For the respondent

[15] In addition to *Schenkman*, the respondent relied on the following decisions: *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93, *Martin v. Treasury Board (Department of Human Resources and Skills Development)*, 2015 PSLREB 39, *Parker v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 57, *Gill v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 81, *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92, and *Featherston v. Deputy Head (Canada School of Public Service)*, 2010 PSLRB 72.

[16] The respondent argued that the grievance is untimely as it was filed several months after the impugned decision was made. Pursuant to clause 18.15 of the collective agreement, the applicant had 25 days after the respondent's decision to file her grievance. She failed to; therefore, the grievance is untimely. The respondent argued that "… an adjudicator appointed to hear a reference to adjudication under section 209 of the [*Act*] …" is without jurisdiction to hear the grievance.

[17] With respect to the applicant's application for an extension of time, the respondent argued that the grievance is not a continuing grievance. Going through the *Schenkman* criteria, it argued that the applicant failed to provide a clear, cogent, and compelling reason for the delay filing her grievance. Absent such a reason for the delay, the Board need not evaluate the rest of the *Schenkman* criteria.

[18] The applicant failed to demonstrate due diligence as she did not provide any explanation as to what prevented her from filing her grievance in a timely manner. On the criterion about the length of the delay, the respondent argued that a delay of

several months is significant. It urged the Board not to give any weight to the balancing of injustice to the applicant and prejudice to the respondent because the applicant failed to provide a clear, cogent, and compelling reason for the delay. Finally, the respondent argued that the chances of success of the grievance cannot be assessed in an evidentiary vacuum.

B. For the applicant

[19] In addition to *Schenkman*, the applicant relied on the following cases: *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2013 PSLRB 144 ("*IBEW Local 2228*"), and *Trenholm v. Staff of the Non-Public Funds, Canadian Forces*, 2005 PSLRB 65.

[20] The applicant argued that the respondent's timeliness objection should be dismissed as the grievance is timely. The grievance is continuing as it pertains to the respondent's ongoing failure to abide by the collective agreement.

[21] Alternatively, the applicant asked the Board to grant her an extension of time under s. 61(b) of the *Regulations* to file her grievance. The circumstances of this case dictate that it is in the interest of fairness to grant the extension of time. The injustice to the applicant far outweighs any prejudice to the respondent; furthermore, the respondent has not claimed any prejudice to it if an extension of time to file the grievance is granted.

[22] The bargaining agent filed a policy grievance in March 2022 related to the very same issue as in this grievance, namely, the continuation of unvaccinated employees being forced on leave without pay.

[23] Any prejudice to the respondent from granting the extension of time is minor. The bargaining agent requested an oral hearing on the preliminary objection so that it could lead evidence relating to the reasons for any real or perceived delay in the grievance procedure.

[24] In her reply to the respondent's response, the applicant argued that the grievance is continuing and that it relates to the repeated breaches of the collective agreement.

[25] The applicant also provided an impact statement about her state of mind when she was placed on unpaid leave and how she struggled to make ends meet. She argued that those were clear, cogent, and compelling reasons justifying the delay filing the grievance.

IV. Reasons

[26] I have determined in this case that it is not necessary for me to decide whether the grievance is a continuing grievance; therefore, the sole issue that I must determine is whether it is in the interest of fairness under s. 61(b) of the *Regulations* to extend the time limits outlined in the collective agreement, to allow this grievance to continue.

[27] In *Grouchy*, the Board explained that enforcing prescriptive time limits in labour relations disputes is "… consistent with the principles that labour relations disputes should be resolved in a timely manner and that parties should be entitled to expect that an issue has come to an end when a prescribed time limit has elapsed." This general underlying rationale is also reflected in the commitment to a "… fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment …" as stated in the preamble to the *Act*. The values of fairness, efficiency, and credibility in resolving labour relations disputes dictate a nimble approach when enforcing prescribed time limits.

[28] The *Regulations* provide two avenues for granting relief against the strict enforcement of prescribed time limits. First, the parties themselves can agree to extend the time limits before or after they expire. Second, in the absence of such an agreement, a party may apply to the Board or an adjudicator to exercise the discretion to extend prescribed time limits "in the interest of fairness". Section 61 provides as follows:

61 *Despite anything in this Part, the time prescribed by this Part or provided for in a grievance procedure contained in a collective agreement for the doing of any act, the presentation of a grievance at any level of the grievance process, the referral of a grievance to adjudication or the providing or filing of any notice, reply or document may be*	***61*** *Malgré les autres dispositions de la présente partie, tout délai, prévu par celle-ci ou par une procédure de grief énoncée dans une convention collective, pour l'accomplissement d'un acte, la présentation d'un grief à un palier de la procédure applicable aux griefs, le renvoi d'un grief à l'arbitrage ou la remise ou le dépôt d'un avis, d'une réponse ou*

extended, either before or after the expiry of that time,	*d'un document peut être prorogé avant ou après son expiration :*
***(a)** by agreement between the parties; or*	***a)** soit par une entente entre les parties;*
(b) in the interest of fairness, on the application of a party, by the Board or an adjudicator, as the case may be.	***b) soit par la Commission ou l'arbitre de grief, selon le cas, à la demande d'une partie, par souci d'équité.***

[Emphasis added]

[29] In *Schenkman*, the Board developed certain criteria to guide the exercise of discretion under s. 61(b) ("the *Schenkman* criteria"), as follows:

1) whether there is a clear, cogent, and compelling reason for the delay;
2) the length of the delay;
3) whether the applicant exercised due diligence pursuing their grievance;
4) balancing the injustice to the applicant against any prejudice to the respondent; and
5) the chance of success of the grievance.

[30] Since 2004, the Board and its predecessors have consistently applied the *Schenkman* criteria to applications for extensions of prescribed time limits, with varying outcomes. Although there appears to be a divergence in approach, and one might even suggest two schools of thought, the single consistent thread in all the cases is that each application for an extension of time must be assessed on its own unique facts and circumstances. The Board noted in *Gill* that the Board must examine the facts to determine the relevance and weight to give each criterion (see *Gill* at para. 51).

[31] Applying the *Schenkman* criteria is not a mathematical or formulaic exercise. In *IBEW Local 2228*, the Board ruled as follows about the *Schenkman* criteria:

> …
>
> *[62] …* [They] *bear no fixed presumptive calculations that prevent a decision maker from considering whether, in the interests of fairness, an extension of time ought to be granted. The factors that steer such an inquiry are fact-driven and based on the underlying principle of what is fair in the circumstances.…*
>
> …

[32] I agree.

[33] While the *Schenkman* criteria are useful for the Board to exercise its discretion under s. 61(b), each application for an extension of time must be determined on its facts and merits. What may be "in the interest of fairness" in one case may not necessarily be replicated in another case, even if the circumstances are similar. Thus, when applying the criteria, the Board must be guided by the notion of "fairness".

[34] Adopting the ordinary dictionary meaning of the word "fair", "fairness" in this context means making a decision that is just, unbiased, equitable, impartial, and in conformity with established rules (see the *Oxford Encyclopedic Dictionary* and the *Merriam-Webster Dictionary*).

[35] As previously stated, both parties have argued the *Schenkman* criteria in their respective submissions. I will now proceed to analyze the application for an extension of time using that framework while bearing in mind the underlying principle that I must exercise my discretion in the interest of fairness.

A. There is a clear, cogent, and compelling reason for the delay

[36] The applicant presented her grievance on March 14, 2022, stating as follows:

> *I grieve the policy change that "Covid vaccine are mandatory" failure to comply employees will be reprimanded.*
>
> *I grieve the unlawful dismissal.*
>
> *Corrective Action …*
>
> *To be allowed to work attestation free.*
>
> *To be made whole.*
>
> [*Sic* throughout]

[37] The respondent responded to the grievance at the final level of the grievance procedure (bypassing the first and second levels) on August 29, 2022, in part, as follows:

> …
>
> *You were notified of the decision to place you on administrative leave without pay by management on 15 November 2021, and your grievance was filed on 14 March 2022 … As the time limit for presenting the grievance at [sic] first level had already expired, your grievance is denied as it is untimely. Nevertheless, I have reviewed the merits of your grievance.*
>
> …

> *… I am aware that you did not attest to your vaccination status, nor did you submit an accommodation request for the Employer's consideration. Based on this, I find no reason to intervene in the decision of management to place you on administrative leave without pay effective 15 November 2021.*
>
> …

[38] The applicant received two letters in November 2021, notifying her of the respondent's decision, but neither letter informed her of her right to grieve the decision. The November 12, 2021, letter is reproduced as follows:

> …
>
> *On 20 October 2021 you were notified that the Government of Canada was implementing the* Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP *(the* Policy*) which came into effect on October 6, 2021. As you have not attested to your vaccination status, you are not compliant with the* Policy *and will be placed on administrative leave without pay effective 15 November 21 until such time as you comply with the* Policy*.*
>
> *I will review this decision should your situation change.*
>
> *Should you have any questions regarding the process, please feel free to contact LCdr. Daniel Curtis at* [email address redacted] *or* [phone number redacted]*.*
>
> *Please note that the Employee Assistance Program is available to assist you at any time and can be reached at 1-800-*[redacted]*.*
>
> *Sincerely,*
>
> [Signed]
>
> …

[39] The respondent argued that the applicant failed to provide any reason for the delay and urged that the analysis need not proceed any further in the absence of a clear, cogent, and compelling reason (see *Parker* and *Featherston*).

[40] In *Rabah v. Treasury Board (Department of National Defence)*, 2006 PSLRB 101, the applicant was rejected on probation. The employer never advised him that he could grieve the decision. At the same time, the applicant was criminally charged with drug trafficking. The Board found that these facts provided a "… compelling reason for not having filed a grievance" in a timely manner (see *Rabah* at para. 41). In *Richard v. Canada Revenue Agency*, 2005 PSLRB 180, the applicant's fragile state of mind was a

factor to consider in the determination of a clear, cogent and compelling reasons for the delay in filing a grievance (see *Richard* at paras. 58, 61 and 64).

[41] The respondent did not inform her that she had any grievance rights with respect to the November 2021 decision. To the contrary, in the November 12, 2021, letter the respondent informed her that it would review its decision should applicant's situation change and that she could communicate with Lt.-Cmdr. Daniel Curtis if she had any questions about the process. The letter specified that the Employee Assistance Program was available to assist her at any time.

[42] In this context, I also note that the previous communication, which was the letter dated November 1, 2021, set out a process under which the applicant was required to attend a training session on the benefits of COVID-19 vaccination and to receive her first dose before November 15, 2021. Again, no reference is made to the employee being able to grieve the direction to attend a training session and to receive a first dose of the vaccine, although the consequence of failing to follow the direction was clearly spelled out as being placed on leave without pay.

[43] In the grievance reply, the respondent stated that the applicant did not comply with the direction or request an accommodation. Again, the possibility of requesting an accommodation was not outlined anywhere in the two letters that she received.

[44] In March 2022, the bargaining agent filed a policy grievance related to the same issue raised by this individual grievance, namely, against the continuation of unvaccinated employees being forced onto leave without pay. The applicant provided no further details about the policy grievance nor its status. The respondent did not specifically address the applicant's submission on this point.

[45] In her reply dated December 12, 2023, the applicant provided detailed reasons for the delay. In particular, she highlighted the following:

> …
>
> *… From the time the grievor was placed on unpaid leave, she was struggling to make ends meet. As stated in the attached impact statement, she was responsible for three children, one of whom had a disability. The grievor was in the impossible position of choosing between buying nutritious food and paying for gas so she could go to her other job in an attempt to pay her bills.*
>
> …

[46] The applicant provided a dire impact statement dated June 19, 2022, in which she described her daily struggles to make ends meet after receiving three weeks of Employment Insurance benefits after November 12, 2021, when she was put on leave without pay. She stated that in the early days of the pandemic, when things started to shut down, employees had the choice between staying home with pay or going into the office to work. She was one of only four employees who continued to go in to work, to provide her services to the respondent. She had to resort to selling personal effects to make ends meet.

[47] Given the dire impacts described in her statement, I am prepared to infer that filing a grievance was the last thing on her mind at the time of being placed on leave without pay. I am satisfied that her statement provides a clear, cogent, and compelling reason for not filing a grievance within the prescribed time limit. This inference is buttressed by the absence of any reference to the right to grieve in the letters she received from the respondent.

B. Length of the delay

[48] Both parties provided very little argument on this criterion. Relying on *Grouchy*, the respondent argued that time limits are not elastic and that extending them must be an exception; furthermore, the parties should be entitled to expect that an issue has come to an end when a prescribed time limit has expired. In addition to the applicant's position that this is a continuing grievance, she also argued that a policy grievance on the same issue was filed in March 2022. Neither party provided any information as to the timeliness of the policy grievance.

[49] The delay in this case occurred at the onset of the grievance process. The delay is about three months. The Board and its predecessors have ruled that delays of four or five months at the onset of the grievance process are neither minimal nor excessive. In *Thompson v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 59 at paragraph 14, the Board was not prepared to qualify a delay of four or five months to file a grievance as "short or long." Similarly, a four to five-month delay in filing a grievance was not an excessive delay in *Duncan v. National Research Council of Canada*, 2016 PSLREB 75 (at paragraph 147) nor was a four-month delay in *Guittard v. Staff of the Non-Public Funds, Canadian Forces*, 2002 PSSRB 18 at paragraph 28.

[50] In this case, I do not find that a three-month delay in filing a grievance is inordinate.

[51] In the *Schenkman* analytical framework, and considering the underlying facts of this grievance, I do not give much weight to the length of the delay.

C. Due diligence of the applicant

[52] The respondent argued that the applicant provided no explanation as to what prevented her from filing her grievance in a timely manner. This presupposes that the applicant knew of her right to grieve and then failed to exercise it in a timely manner. As noted above, the letter communicating the decision did not inform the applicant that she had a right to grieve it. Rather, the letter suggested that the decision would be reviewed should her status change and that she could contact Lt.-Cmdr. Curtis if she had any questions about the "process".

[53] The applicant's submissions on this criterion were sparse and appeared to be based solely on her position that this is a continuing grievance and therefore, it could have been filed at any point during the alleged breach of articles 6 and 19 of the collective agreement.

[54] Even if I accept the respondent's position, I have already inferred from the applicant's impact statement that filing a grievance was the last thing on her mind when she was placed on administrative leave without pay in November 2021.

[55] Therefore, I give this criterion little weight in my assessment.

D. Balancing the injustice to the applicant against the prejudice to the respondent

[56] The applicant argued that the injustice to her should the timeliness objection be upheld far outweighs any prejudice to the respondent. She argued further that the respondent did not claim that it would suffer any prejudice and did not adduce any evidence of the prejudice that it would suffer should the grievance be allowed to proceed. The respondent had the opportunity to respond to both the timeliness issue and the merits of the grievance.

[57] Furthermore, the bargaining agent filed a policy grievance in March 2022 related to the same issue. The injustice to the applicant is significant since she has suffered

monetary losses. On the other hand, any prejudice to the respondent in terms of monetary losses is minor.

[58] The respondent argued that this criterion should not carry much weight because the applicant did not establish clear, logical, and convincing reasons for the delay; nor did she demonstrate due diligence. Further, the respondent argued that it should be entitled to some certainty that labour disputes will be resolved in a timely manner (see *Grouchy*).

[59] Based on the applicant's impact statement, I am of the view that the prejudice to her should the extension not be granted far outweighs any prejudice to the respondent. Other than the reliance on the values of certainty and finality in labour disputes that the Board espoused in *Grouchy*, the respondent did not describe any prejudice that it would suffer were the extension of time granted.

[60] Further, given that there is a policy grievance on the same issue, any prejudice to the respondent from allowing this individual grievance to proceed is minor, particularly considering the remedial scope on policy grievances outlined in s. 232 of the *Act*, which provides as follows:

232 *If a policy grievance relates to a matter that was or could have been the subject of an individual grievance or a group grievance, an adjudicator's or the Board's decision in respect of the policy grievance is limited to one or more of the following:*	***232*** *Dans sa décision sur un grief de principe qui porte sur une question qui a fait ou aurait pu faire l'objet d'un grief individuel ou d'un grief collectif, l'arbitre de grief ou la Commission ne peut prendre que les mesures suivantes :*
(a) *declaring the correct interpretation, application or administration of a collective agreement or an arbitral award;*	***a)*** *donner l'interprétation ou l'application exacte de la convention collective ou de la décision arbitrale;*
(b) *declaring that the collective agreement or arbitral award has been contravened; and*	***b)*** *conclure qu'il a été contrevenu à la convention collective ou à la décision arbitrale;*
(c) *requiring the employer or bargaining agent, as the case may be, to interpret, apply or administer the collective agreement or arbitral award in a specified manner.*	***c)*** *enjoindre à l'employeur ou à l'agent négociateur, selon le cas, d'interpréter ou d'appliquer la convention collective ou la décision arbitrale selon les modalités qu'il fixe.*

[61] Although the applicant has no control over the policy grievance, she has the bargaining agent's support to pursue her individual grievance on the same issue as the policy grievance. It would be contrary to the principles of fairness to deny an extension of time on this criterion. Nothing on the record describes the extent of prejudice to the respondent should an extension of time be granted. In my view, not granting the extension of time for the applicant to file her grievance would be unjust and inequitable.

E. Chances of success of the grievance

[62] The applicant made no substantive submissions on this criterion except to rely on a statement in *Trenholm* that relief may be granted from mandatory deadlines in cases in which, among other factors, "the grievance has merit."

[63] On the other hand, the respondent argued that the chances of success of a grievance cannot be assessed in an evidentiary vacuum.

[64] I agree with the respondent. It would be premature and even irresponsible to offer any opinion on the grievance's chances of success. Therefore, I give no weight to this criterion.

[65] I conclude that it is in the interest of fairness to grant the applicant's request for an extension of time considering that she presented a clear, cogent, and compelling reason for the delay. Its length is not inordinate, and the potential injustice to the applicant outweighs any prejudice to the respondent.

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

(The Order appears on the next page)

V. Order

[67] The respondent's timeliness objection is dismissed.

[68] The applicant's request for an extension of time to file the grievance is granted.

[69] The grievance in Board file number 566-02-45649 will be sent to the Board's Registry for scheduling in due course.

May 16, 2024.

Caroline Engmann,
a panel of the Federal Public Sector
Labour Relations and Employment Board