

Date: 20240730

File: 568-02-49695

XR: 566-02-47113

Citation: 2024 FPSLREB 99

*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

PATRICK READY

Applicant

and

**TREASURY BOARD
(Department of Veterans Affairs)**

Respondent

Indexed as

Ready v. Treasury Board (Department of Veterans Affairs)

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: Marie-Claire Perrault, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Applicant: Chantale Mercier, Public Service Alliance of Canada

For the Respondent: John Mendonça, analyst

Decided on the basis of written submissions,
filed December 20, 2023, and May 3, 14, and 23, 2024.

REASONS FOR DECISION

I. Application before the Board

[1] On April 11, 2023, Patrick Ready (“the applicant”) referred a grievance, concerning leave during the COVID-19 pandemic, to adjudication before the Federal Public Sector Labour Relations and Employment Board (“the Board”). On April 25, 2023, the Treasury Board (“the respondent”) objected to the referral, as the grievance had allegedly not been filed in a timely fashion. The Treasury Board is the legal employer; the applicant works for the Department of Veterans Affairs, to which the Treasury Board has delegated human resources authority. In this decision, the Department of Veterans Affairs is also considered the respondent.

[2] The applicant replied to the objection, and he applied for an extension of time to file the grievance.

[3] Under s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; “the *Regulations*”), the Board may, in the interest of fairness, extend the time prescribed by Part 2 of the *Regulations* 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 procedure, the referral of a grievance to adjudication, or the providing or filing of any notice, reply, or document.

[4] For the reasons that follow, the respondent’s objection is dismissed. I find that the grievance is timely, and if not, the extension of time is granted.

II. Context

[5] The applicant is a processing clerk (classified CR-04) at Veterans Affairs Canada. He is the single father of five children, four of whom were under the age of seven in December 2021. On December 7, 2021, one of his children became ill, and all his children were sent home from school. They had to quarantine for four days because of the school’s COVID-19 protocol. The applicant requested leave with pay for other reasons (699 leave). The request was denied on December 14, 2021.

[6] He took his last three vacation days as leave, a half-day as unpaid leave, and made up the remaining half-day later.

[7] The applicant became aware sometime in the spring of 2022 of a decision issued by the Board on March 7, 2022 (*Public Service Alliance of Canada v. Treasury Board*, 2022 FPSLRB 12; “the March 2022 decision”) on the issue of 699 leave. On April 22, 2022, he grieved the fact that he had had to use leave credits to cover time taken to care for his children, who were quarantined at home under COVID-19 health protocols. According to his interpretation of the March 2022 decision, the respondent should have granted him 699 leave.

[8] The respondent objected to the referral, as the grievance had not been filed within the 25-day time limit provided in the relevant collective agreement. In each of its replies to the grievance, the respondent dismissed it on the basis of timeliness.

[9] The respondent also addressed the substance of the grievance in its replies, stating that 699 leave was not unreasonably withheld, as other types of paid leave were available for caregiving responsibilities.

III. Summary of the arguments

A. For the applicant

[10] After becoming aware of the March 2022 decision on the use of 699 leave in the COVID-19 pandemic circumstances, the applicant asked for the vacation credits that he had used in December 2021 to be returned to him. That request was denied. According to him, the denial should be the starting point for calculating the timeline for the grievance.

[11] The applicant argued that this is a continuing grievance, and therefore, it is timely. Citing the Board’s decision in *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLRB 93, the applicant submits that the March 2022 decision amounted to a change of circumstances, which reset the time limit.

[12] Should the Board find that the grievance is untimely, the applicant submitted that it should grant him an extension of time, in accordance with s. 61(b) of the *Regulations*, in the interest of fairness.

[13] To support his request for an extension of time to file the grievance, the applicant presented the following arguments: the delay (from December 2021 to April 2022) was not excessive, he was diligent with his grievance once the process started, he stands to suffer significantly more harm if the extension of time is denied than the

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respondent would suffer if it is granted, and the grievance is neither frivolous nor vexatious.

B. For the respondent

[14] The respondent reprised the well-known analysis in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, to consider the five criteria that the Board usually takes into account to determine whether an extension of time should be granted.

1. Clear, cogent, and compelling reasons for the delay

[15] The applicant invoked the March 2022 decision as giving rise to the grievance related to the denial of his requested 699 leave in December 2021. The March 2022 decision does not deal with retroactive compensation and therefore does not offer a reason for the delay filing his grievance. There is no clear, cogent, and compelling explanation for the delay.

2. The length of the delay

[16] The respondent did not dispute that the delay, in view of the jurisprudence, is not excessive. However, it remains unexplained.

3. The applicant's due diligence

[17] According to the respondent, the applicant did not demonstrate due diligence. The grievance arose only once he became aware of the March 2022 decision.

4. Balancing the injustice to the applicant if the extension is denied against the prejudice to the respondent if it is granted

[18] The respondent sees no injustice in finding the grievance untimely. The March 2022 decision that the applicant relied on does not necessarily support his position.

5. The chance of success of the grievance

[19] The respondent is of the view that the grievance has no chance of success since the March 2022 decision does not purport to have a retroactive effect.

IV. Analysis

[20] It is clear that but for the March 2022 decision, the applicant would not have grieved the denial of his requested 699 leave. He sees the change brought about by the March 2022 decision as a stepping stone for his grievance.

[21] Although the applicant qualified his grievance as a “continuing grievance”, I think the situation is better characterized as a change in circumstances. A grievor’s repeated requests for reconsideration do not automatically reset timelines; however, it will do so where the “... request is based on changed circumstances or if the employer considers additional information when arriving at its decision” (see *Bowden*, at para. 49). I find that the release of the March 2022 decision constitutes such a change in circumstances. Given that finding, I am of the view that the grievance is timely.

[22] I would add that if the grievance is untimely because it had to be linked to the respondent’s action in December 2021, I think an extension of time is warranted, and would grant it in the interest of fairness.

[23] There is a clear and compelling reason that the grievance was filed three months late; that is, a change in circumstances, namely the release of a Board decision that could affect the respondent’s decision.

[24] The three-month delay, as the respondent concedes, is not excessive.

[25] There is no reason to doubt the applicant’s and his bargaining agent’s diligence after the grievance was filed.

[26] Balancing the respective interests is one of the more compelling reasons to grant the extension — the applicant asked that his vacation credits be reimbursed; they are a precious commodity for a single father of five. The respondent advanced nothing to show how it would be harmed by the grievance proceeding to adjudication.

[27] Finally, the grievance’s chance of success is, as in most cases, impossible to determine at this stage. Any retroactive application of the March 2022 decision has yet to be considered by the Board.

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

(The Order appears on the next page)

V. Order

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

[30] The extension of time to file the grievance is granted. It will be scheduled for a hearing in due course.

July 30, 2024.

**Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board**