

Date: 20240611

File: 566-02-47150

Citation: 2024 FPSLREB 79

*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

ROBERT NUAMAH

Grievor

and

**DEPUTY HEAD
(Royal Canadian Mounted Police)**

Respondent

Indexed as

Nuamah v. Deputy Head (Royal Canadian Mounted Police)

In the matter of an individual grievance referred to adjudication

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

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

For the Respondent: Alison Donker, representative

Decided on the basis of written submissions,
filed May 1, 3, and 23, 2023.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Robert Nuamah (“the grievor”) was formerly a CR-04 employee of the Treasury Board (“the respondent”) with the Royal Canadian Mounted Police (“RCMP”). By letter dated May 2, 2022, Brenda Lucki, the RCMP’s commissioner, terminated his employment.

[2] The grievor grieved the termination. The RCMP received the grievance on November 15, 2022. On April 14, 2023, following the final level grievance reply of March 7, 2023, the grievor referred the matter to adjudication before the Federal Public Sector Labour Relations and Employment Board (“the Board”). He also gave notice to the Canadian Human Rights Commission of his intention to raise an issue of discrimination on the basis of family status.

II. Preliminary objection to the Board’s jurisdiction

[3] On May 2, 2022, the RCMP issued a termination letter addressed to the grievor. It stated as follows:

...

I am writing further to the correspondence sent to you by management regarding your unauthorized absence from the workplace.

As a result of your continued unwillingness to discuss your leave situation, you were placed on unauthorized leave without pay effective April 21, 2020. On November 24, 2020, you ceased all communication with management. Since that time, management has made numerous attempts to contact you through various means without success. In addition, on January 12, 2022, and January 20, 2022, Sergeant Cameron Kamiya sent you letters requesting that you report to work to explain your unauthorized absence. These letters also advised you that your failure to comply with this direction may result in your termination of employment. You did not reply to any of these letters as requested.

As you have made no efforts to contact management to advise them of your intentions with respect to your absence from the office, and all attempts to contact you have been unsuccessful, I have concluded that you have wilfully abandoned your position.

Therefore, in accordance with paragraph 12 (1)(e) of the Financial Administration Act, I hereby terminate your employment with the RCMP. Your termination of employment is effective as of the date of this letter.

Should you wish to grieve this decision, you may do so by filing your grievance at the final level of the departmental grievance procedure in accordance with the relevant provisions of your collective agreement.

...

[4] The grievance stated, "I grieve the termination of my employment effective May 1, 2022 as well as the letter of termination that I have never received." It appears that the grievor erred in the date that he provided, which does not affect the disposition of this grievance.

[5] On March 7, 2023, the RCMP replied to the final level grievance presentation to state:

...

This is further to the grievance you presented on November 15, 2022, in which you grieved the termination of your employment effective May 1, 2022. This letter constitutes the reply at the final level of the departmental grievance procedure.

I have reviewed the facts and circumstances related to your grievance and have carefully considered the written representation provided by Mr. Christian Lemaine of the Union of Solicitor General Employees.

Article 18.15 of the Program and Administrative Services Collective Agreement states that "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."

You were terminated May 2, 2022, for abandonment of position. Canada Post tracking shows that the letter was delivered to your residence on May 5, 2022. As a result, the grievance you submitted on November 15, 2022, is outside of this time limit. I must therefore deny your grievance on the basis that it is untimely. Notwithstanding and without prejudice, I have reviewed the merits of your complaint.

In accordance with paragraph 12(1)(e) of the Financial Administration Act, a decision was made to terminate your employment for abandonment of position as you had made no efforts to contact management to advise them of your intentions with respect to your absence from the office and all attempts to contact you had been unsuccessful. Moreover, there is no information at my disposal which would suggest that the Employer failed in its duty to accommodate you.

Given the circumstances, I find the decision to terminate you for abandonment of position to be reasonable. In view of the above, I am denying your grievance and the corrective actions you have requested.

Regards,

Brenda Lucki

Commissioner

[6] On May 1, 2023, following the reference of the grievance to adjudication, the respondent replied to object to the Board's jurisdiction to hear the matter, as in its view, the grievance was untimely.

A. For the respondent

[7] The respondent stated that the letter of termination was delivered to the grievor's residence on May 5, 2022. To support its position, it provided a Canada Post receipt to indicate that Canada Post received the letter on May 3, 2022, and delivered it on May 5, 2022.

[8] The Program and Administrative Services (PA) collective agreement between the Treasury Board and the Public Service Alliance of Canada that expired on June 20, 2018 ("the CA"), required that a grievance be presented no later than 25 days after the date on which the grievor was notified or became aware of the events underpinning it.

[9] In this case, the grievance was presented on November 15, 2022, which was more than 130 working days after the grievor was notified that his employment had been terminated.

[10] The grievor's failure to comply with the specified time limit of 25 days from May 5, 2022, to present his grievance leaves the Board without jurisdiction to proceed with its adjudication.

B. For the grievor

[11] The grievor questioned whether the RCMP sent him the termination letter. He noted from the receipt that no signature was required when it was delivered. No tracking information was provided that would verify that it was delivered.

[12] The grievor's submission stated that the RCMP also emailed him the termination letter on May 6, 2022. However, he did not see the email until November 2022, which

was when he became aware that his employment had been terminated. He then filed a timely grievance within the following 25 days.

III. Analysis

[13] The RCMP denied the grievor's grievance at the final and only level on March 7, 2023, on the basis of timeliness. The grievance reply stated that the letter of termination was delivered to the grievor on May 5, 2022. When the grievance was filed on November 15, 2022, it was beyond the time permitted by clause 18.15 of the CA to present a grievance.

[14] Clause 18.15 of the CA provided 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....*

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 [...]*

[15] The grievor disputed whether he received the letter of termination sent with Canada Post. If I set to one side the respondent's assertion that it mailed the letter on May 2, 2022, nonetheless, I give considerable weight to the grievor's acknowledgement that an email containing the letter was sent to him on May 6, 2022, or four days after the decision was made to terminate his employment. He added that he did not "see" the email until November 2022. However, he provided no explanation to account for the interval of approximately six months from the time the email was received to "seeing" it.

[16] The grievor's position is that he was entitled to present his grievance no later than 25 days after he saw the email, presumably because he then had actual awareness of the termination.

[17] Clause 17.01 of the CA stated this:

17.01 *When an employee is suspended from duty or terminated in accordance with paragraph*

17.01 *Lorsque l'employé-e est suspendu de ses fonctions ou est licencié aux termes de l'alinéa*

12(1)(c) of the Financial Administration Act, the Employer undertakes to notify the employee in writing of the reason for such suspension or termination. The Employer shall endeavour to give such notification at the time of suspension or termination.

12(1)c) de la Loi sur la gestion des finances publiques, l'employeur s'engage à lui indiquer, par écrit, la raison de cette suspension ou de ce licenciement. L'employeur s'efforce de signifier cette notification au moment de la suspension ou du licenciement.

[18] In my view, the grievor's interpretation that actual awareness starts the time limit in clause 18.15 is not reasonable. It restrictively relies on the date on which he first gained awareness that his employment was terminated and gives no significance to the express provision of clause 18.15 of the CA that the time runs from "... the date on which the grievor is notified ...".

[19] The information before me includes a strong suggestion that the RCMP sent a letter to the grievor on May 3, 2022. However, it is beyond doubt that the grievor received an email that included the letter of termination on May 6, 2022. With no reasonable explanation for the delay before "seeing" the email, I find that it constituted notification in writing to the grievor, irrespective of when he saw it. In accordance with clause 18.15 of the CA, the time is then measured from May 6, 2022, at the latest.

[20] Accordingly, I find that the grievor was notified of the termination of his employment by May 6, 2022. Given that the grievance was filed on November 15, 2022, it was not presented within the 25-day limit set out in clause 18.15 of the CA. It was considerably out of time. As such, I accept the respondent's preliminary objection and find that the reference to adjudication does not fall within the Board's authority.

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

(The Order appears on the next page)

IV. Order

[22] The Board has no jurisdiction to proceed in this matter. The file is closed.

June 11, 2024.

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