Date: 20240813

Files: 566-02-44552
568-02-45153

Citation: 2024 FPSLREB 109

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

LYNE DESJARDINS

Grievor

and

TREASURY BOARD
(Department of Foreign Affairs, Trade and Development)

Employer

Indexed as
Desjardins v. Treasury Board (Department of Foreign Affairs, Trade and Development)

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

Before: Renaud Paquet, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Katty Duranleau, counsel

For the Employer: Andréa Baldy, counsel

Heard at Ottawa, Ontario,
April 23 to 26 and April 29 to May 3, 2024,
and by videoconference, May 30 and July 11, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Individual grievances referred to adjudication

[1] On June 16, 2021, Lyne Desjardins ("the grievor") filed four grievances against the Department of Foreign Affairs, Trade and Development ("the employer"). She has been on medical retirement since June 2017. Starting in 1998, she held an information technology security officer position at the CS-02 group and level at the Canadian International Development Agency (CIDA), which is now part of the employer. Over the years that she worked for the employer, she also held a position on an acting basis at the CS-03 group and level. The applicable collective agreement was between the Treasury Board and the Professional Institute of the Public Service of Canada ("the bargaining agent") for the Computer Systems group that expired on December 21, 2010 ("the collective agreement").

[2] The grievor's first grievance bears the number 2021-GR-21 ("grievance 21"). The "[translation] grievance statement" reads as follows:

> [Translation]
>
> *I am filing a grievance because my employer has taken no action to stop the workplace harassment of which I have been a victim and have faced behaviour that is discriminatory, abusive, and in bad faith, namely, due to the following facts …*
>
> *• Ignoring the harassment that I suffered from Charlene Caines-Lufman, which resulted in sick leave, then sick leave without pay due to disability*
>
> *• Compensation continued to make me pay Sun Life insurance premiums during my unpaid leave due to disability when I was exempt from paying them (March 24, 2010, letter)*
>
> *• Compensation failed to maintain Sun Life coverage for six months after my medical retirement (December 3, 2020, letter)*
>
> *• Compensation removed my dental insurance benefits (Great West) retroactively to January 29, 2016, when I was still an employee. And I had to cover all the costs*
>
> *• Luc Raymond and Christine Sabourin ignored Sun Life's specialist doctor's favourable prognosis*
>
> *• The employer is making me pay for the medical examinations that it requires*
>
> …
>
> *• Luc Raymond and Christine Sabourin decided for me that medical retirement was preferable to a return to work and took*

steps to restrict me to it without me being able to benefit from a return to work

- *Neither Luc Raymond nor Christine Sabourin informed me of the options to return to work with an accommodation or gradually*
- *Management compelled me to sign a consent form to subject me to a fitness-to-work evaluation without giving me information about that document*
- *Neither Christine Sabourin nor Health Canada talked with me or my doctor about an accommodation or a gradual return to work*
- *Christine Sabourin tried to refer me immediately to Health Canada without consulting my doctor*
- *Christine Sabourin returned my personal effects to me at home while I was still an employee*
- *Without warning me, in August 2012, Christine Sabourin wrote to my doctor, to request a medical opinion on my fitness to work*
- *Without warning, Luc Raymond sent me the medical retirement documents even though I had never expressed a desire for or requested them*

…

- *Nathalie Godin informed me that senior management would end my employment if I did not take medical retirement*
- *Attempts to have me resign retroactively by Jean-François Landry and Danielle Dauphinais*
- *Danielle Dauphinais compelled me to take medical retirement, to have access to my insurance coverage*
- *Danielle Dauphinais informed me that a return to work was impossible because Health Canada approved my file*
- *Charlene Janvier accepted my resignation, yet she was not my supervisor*
- *On June 15, 2017, Compensation sent me an end-of-employment letter to my email address for medical retirement retroactive to January 29, 2016*
- *Luc Raymond or Christine Sabourin did not give me information about the impact of a workforce adjustment as mentioned in the April 16, 2012, letter*
- *Luc Raymond cut my substantive position (SAP-4902) on January 7, 2014, without notifying me and while I was still an employee*
- *Luc Raymond did not declare me opting, like my co-workers*

…

- *Derrick Stewart cut my new position (419822) on August 10, 2016, without notifying me while I was still an employee without an offer to return to work*

> *• Marie-Claude Boisvert did not inform me that Derrick Stewart was my new supervisor*
>
> *• I was without a substantive position between January 7, 2014, and March 31, 2014, so I had no position in which to return to work*
>
> *• I was without a substantive position between August 10, 2016, and June 15, 2017, so I had no position in which to return to work*
>
> *• On July 28, 2017, Charlene Janvier accepted my resignation dated June 15, 2017, although she was not my supervisor*
>
> *• On February 4, 2021, Luc Raymond informed me that my substantive position (SAP-4902) had been eliminated on June 16, 2017, when it was eliminated on January 7, 201.*
>
> *I also challenge that my employer advocated medical retirement instead of returning to work with an accommodation or gradually.*

[3] The grievor's second grievance bears the number 2021-GR-28 ("grievance 28"). The "[translation] grievance statement" reads as follows:

> [Translation]
>
> *I am filing a grievance because my employer gave me incorrect information by stating that I could not return to work because Health Canada had approved my medical retirement, and if I did not take it, my employment would be terminated, thus impacting my severance pay. I also challenge the fact that my Employer did not put an accommodation in place that would have allowed me to return to work after my disability leave, which violated its duty to accommodate.*
>
> *Its devaluation of me as an employee seriously impacted my psychological health and caused financial hardship.*

[4] The grievor's third grievance bears the number 2021-GR-29 ("grievance 29"). The "[translation] grievance statement" reads as follows:

> [Translation]
>
> *I am filing a grievance to claim money that I am owed for:*
>
> *• The payment of my severance pay (alternative to the denial of my grievance 2)*
>
> *• The payment of the balance of my annual leave and my accumulated overtime (alternative to the denial of my grievance 2)*
>
> *• The reimbursement of the money that I paid for the medical examinations that my employer, Health Canada, and Sun Life required.*

> *• Compensation continued to make me pay Sun Life insurance premiums during my leave without pay due to disability when I was exempt from paying them (March 24, 2010, letter)*
>
> *• Compensation failed to maintain Sun Life coverage for the six months after my medical retirement (December 3, 2020, letter)*
>
> *• Compensation removed my dental insurance benefits (Great West) retroactively to January 29, 2016, when I was still an employee, and I had to cover all the costs*

[5] The grievor's fourth grievance bears the number 2021-GR-30 ("grievance 30"). The "[translation] grievance statement" reads as follows:

> [Translation]
>
> *I am filing a grievance to challenge the claim of all pension contributions and outstanding insurance that is related to a past period of leave without pay.*

[6] The corrective measures that the grievor sought for grievances 21, 28, 29, and 30 is summarized as follows:

> • the payment of money to compensate for the pain and suffering caused by workplace harassment and discrimination;
> • to be reinstated to the workforce retroactively to February 2, 2010;
> • to be declared surplus retroactively to April 17, 2014;
> • to be declared "[translation] opting" on the date on which the grievance is settled;
> • that the employer reimburse all sums that these measures involve and that it pay the tax implications; and
> • the reimbursement of any sums still owing at this time.

[7] The employer responded at the final level of the grievance process on March 9, 2022, and the four grievances were referred to adjudication on April 14, 2022, with the bargaining agent's support. For adjudication purposes, the four grievances form a single Board file, no. 566-02-44552.

[8] The employer challenged my jurisdiction to hear the grievances on the basis that when they were filed, the grievor had no longer been a public service employee for several years. In addition, they would have been filed outside the time set out in the collective agreement. I will return to those objections later, and I will deal with them before ruling on the merits of the grievances.

II. Summary of the evidence

[9] In general, the facts of the grievances are not in dispute. Therefore, I will present all the evidence that the parties submitted.

[10] The grievor testified first. She adduced 138 documents into evidence. She also called Chloé Charbonneau-Jobin as a witness who, during the time that her testimony covered, was an officer for the bargaining agent. She is a lawyer. The employer called Charlène Janvier, Jean-François Landry, and Luc Raymond as witnesses. During the time that their testimonies covered, they worked for the employer. Ms. Janvier was a labour relations advisor and the manager of the Disability Management Program. Mr. Landry was a compensation manager, and Mr. Raymond was the director on an acting basis of corporate security, infrastructure, and management services. He also managed the employer's workforce-reduction program. The employer adduced 75 documents into evidence.

[11] The employer hired the grievor in 1998 into an information technology security position. Between 2008 and 2010, she experienced very difficult moments, both personally and professionally. At that time, she was a single mother who had no help. One of her children lost their sight. At work, her relationship with her supervisor was not good. According to her, the supervisor made her feel like she was not doing a good job and reportedly shouted at the grievor. The whole situation greatly affected the grievor and caused her to experience a bout of severe depression. On February 20, 2010, she grievor went on sick leave. She never returned to work.

[12] On March 24, 2010, the employer wrote to the grievor and confirmed that she would be on sick leave without pay starting on February 20, 2010. It explained her options and responsibilities with respect to, among other things, disability benefits, the rehabilitation program, the Canada Pension Plan, the Quebec Pension Plan, retirement for health reasons, and the applicable deductions. She testified that she received the March 24, 2010, letter but that she might not have read it at the time.

[13] The grievor eventually asked the bargaining agent for help. First, a representative from the bargaining agent's local reviewed her case. She then referred the grievor to Ms. Charbonneau-Jobin, who suggested that the grievor put in writing her allegations against the employer. Based on the contents of the allegations, she could have then recommended that the grievor either file a grievance or make a

harassment complaint. Ms. Charbonneau-Jobin also informed the grievor of the time limits for both procedures.

[14] On July 27, 2010, Sun Life, which held the federal public service group-disability insurance contract at that time, notified the grievor that it agreed to pay her disability insurance benefits retroactively, to May 4, 2010, at a rate of 70% of her salary. It also notified her that she should regularly provide medical certificates that would confirm her state of health.

[15] In the meantime, in May 2010, an employer compensation advisor asked the grievor if she wanted to pay her healthcare plan premiums in advance, to maintain her coverage. It was later found that she was exempt from paying them at that time.

[16] According to the notes dated October 27, 2010, in Sun Life's file, the grievor told the Sun Life representative that she was unable to work because of her state of health. At that time, she was waiting to undergo surgery in addition to suffering from depression. She also said that she would like to return to work once her physical and mental health recovered.

[17] On December 22, 2010, Dr. Louis Demers, the grievor's family physician, wrote to Sun Life and stated that the grievor was still suffering from major depression with a severe intensity. According to him, a return-to-work date was impossible to determine at that time. However, he selected April 11, 2011, as a possible one. He also mentioned that she would then definitely need help with the return, which had to be gradual.

[18] On April 1, 2011, Marie-Hélène Lyon, the grievor's manager, wrote to her, to inquire about her state of health. She wrote that the grievor's office was still unoccupied and that she hoped that the grievor's health had improved. She asked the grievor if she planned to return to work in July, whether full- or part-time, and to let her know if the grievor had any work restrictions. The grievor replied on April 5, 2011, stating that the medical certificate was valid until mid-July 2011 and that her attending doctors assessed her state of health regularly. She stated that she was in professionals' hands and that it was impossible to say more at that time. She testified that at that time, the employer did not propose anything to facilitate her return to work.

[19] I note that in 2023, after she requested access to her file, the grievor obtained a note from a Sun Life representative that stated that apparently, on April 18, 2011,

Ms. Lyon told the representative that the employer would soon make efforts to fill the grievor's position permanently and that she should find out whether the grievor's position would still be available in July 2011. Ms. Lyon also told the Sun Life representative that she had to know the grievor's restrictions and limitations before making a decision on her ability to accommodate the grievor when the grievor returned to work.

[20] On April 26, 2011, Dr. Demers provided Sun Life with a detailed medical report that revealed the grievor's immediate inability to return to work. He stated the following with respect to whether she could benefit from Sun Life's rehabilitation service when she appeared ready to return to work: "[translation] in 2 to 3 months perhaps?" On May 26, 2011, a Sun Life consultant and the grievor had a meeting. That same day, the consultant wrote to her, stating that the rehabilitation plan included communicating with the employer about the availability of her position and determining the limits of the return to work under favourable conditions, Sun Life's offer to pay for eight psychotherapy sessions, following up weekly on her condition's development with respect to her return to work, and developing a return-to-work plan with the parties involved participating. She testified that she started the therapy but that the employer never contacted her about the rehabilitation plan.

[21] On June 6, 2011, the grievor wrote to Ms. Lyon, to ask her about what was going on with her position. On June 17, 2011, Ms. Lyon replied that her position had not been filled in her absence and that her "[translation] employment circumstances" would be the same if she returned to work in July. She told the grievor that she was pleased to learn that the grievor was working with Sun Life to plan her return to work. She also asked the grievor to send her a possible return date and any particular restrictions that she might have. She wrote that the employer would do whatever was necessary for her return to work to succeed. Finally, she informed the grievor that the employer was entitled to staff a position after an absence of more than a year.

[22] On December 4, 2011, Dr. Demers wrote to Sun Life and stated that the grievor's medical condition was still affected by her major depression. He wrote that she could not return to work, even with rehabilitation. At that time, he did not mention any possible return-to-work date.

[23] On January 9, 2012, Sun Life hired a psychiatrist, Édouard Cattan, to provide an expert medical opinion on the grievor's state of health. The grievor saw Dr. Cattan on January 13, 2012. The medical consultation lasted 2.5 hours. Dr. Cattan immediately suggested changes to her medication. He then wrote them on paper, so that she could then benefit from them. Furthermore, she testified that she never saw his detailed report until several years later, through an access-to-information request. In his report, Dr. Cattan wrote that she was not ready to return to work at that time but that her limitations were not permanent. According to him, she should have considered a gradual return to work in the coming 8 to 12 weeks.

[24] On January 11, 2012, Mr. Raymond wrote to the grievor. He pointed out to her that her last medical certificate meant that her absence from work would exceed two years. He asked her if she would continue to be absent beyond April 2012. He also asked her whether it was possible to meet with her or to hold a conference call the following Monday with Ms. Sabourin from Labour Relations. As he did not receive a reply, he wrote to her again on January 16, 2012, stating that the date marking two years of absence was approaching and that it could give rise to major changes. She replied on January 17, 2012, and suggested a meeting for the following week, somewhere other than at the employer's offices and with a bargaining agent representative present.

[25] After a few exchanges, it was agreed that the meeting would be held on January 24, 2012, at 10:00 a.m., in Mr. Raymond's office and that the grievor would participate by telephone. She was informed of it by email. However, the meeting was postponed because Ms. Charbonneau-Jobin was no longer available, due to an unforeseen circumstance. But on January 23, 2012, Ms. Charbonneau-Jobin, a representative from the bargaining agent's local, and the grievor had a meeting.

[26] On January 27, 2012, Ms. Charbonneau-Jobin wrote to the grievor, informing her that she would try again to set up the meeting that was supposed to take place with Mr. Raymond on January 24, 2012. Nothing in the evidence explained what happened to that meeting request. The grievor testified that the meeting in question never took place. Then, on February 14, 2012, Ms. Charbonneau-Jobin wrote to the grievor. She informed the grievor that she had asked the Labour Relations Directorate that the employer not try to contact the grievor directly. She also informed the grievor that she would be absent for the next two weeks.

[27] On March 23, 2012, Ms. Sabourin wrote to Ms. Charbonneau-Jobin. She sent a consent form in which the grievor agreed to undergo a fitness-to-work evaluation by her attending doctor. During the evaluation, the doctor had to make a prognosis for a return to work within six months and any functional limitations or restrictions if she returned to work. The doctor also had to indicate whether medical retirement had to be considered if the grievor was no longer able to return to work. On March 26, 2012, Ms. Sabourin wrote to Mr. Raymond, informing him that Ms. Charbonneau-Jobin agreed that he should send the consent form directly to the grievor. Then, on April 5, 2012, Mr. Raymond did so. She replied that she would send the form in question to Dr. Demers on May 7, 2012. She had already sent a new certificate to the employer for illness until July 2012.

[28] On April 5, 2012, Mr. Raymond also informed the grievor that a meeting had been held with all the directorate's employees, to inform them of the budget cuts' impact on them. Later that same day, Ms. Charbonneau-Jobin asked him whether he had suggested that the grievor attend the all-employee meeting. She reminded him that the grievor was on leave without pay due to illness. Then, on April 16, 2012, the employer wrote to the grievor and informed her that her position numbered SAP-4902 had been identified as an affected position. The employer wrote that as of then, she was considered an affected employee, since her services might no longer be required after the workforce-adjustment exercise. She testified that receiving that letter had made her very anxious. She said that she then called the bargaining agent to ask what it meant. She did not contact the employer for a broader explanation. She testified that she was still waiting for a meeting with it.

[29] On April 26, 2012, the grievor asked Sun Life for a copy of Dr. Cattan's report. On June 5, 2012, Dr. Demers also asked Sun Like for a copy. The grievor testified that Dr. Demers wanted to see the report before making conclusions about her state of health. Neither she nor Dr. Demers received Dr. Cattan's report.

[30] In early June 2012, the grievor and the bargaining agent had several email exchanges about medical retirement and Sun Life benefits. On June 4, 2012, she wrote to Ms. Charbonneau-Jobin and asked her to explain what medical retirement involved. At that time, she wanted to know whether she would maintain her employment relationship, whether she would still receive 70% of her salary, whether she would receive retirement benefits in addition to Sun Life benefits, and the implications with

respect to the Quebec Pension Plan. She also wanted to know the implications of medical retirement on her insurance. Ms. Charbonneau-Jobin directed the grievor to Bernard Dussault, who was the bargaining agent's pension and benefits specialist. Mr. Dussault replied by email to each of the grievor's questions late in the day on June 4, 2022. On June 7, 2022, she asked him for clarification about his answers, and he replied later that same day.

[31] On July 5, 2012, Dr. Demers provided a new medical certificate that stated the following about a possible return to work: "[translation] In October 2012?"

[32] According to the document adduced into evidence, the grievor signed the consent form that the employer sent her on April 5, 2012. She stated that she sent it to Dr. Demers on May 7, 2012. She then signed it on August 10, 2012, and sent it to Mr. Raymond the next day. On August 22, 2012, Ms. Charbonneau-Jobin notified the grievor that instead, the consent form had to be sent to Dr. Demers. She also wrote to her that according to Dr. Demers's medical evaluation, the employer could decide to send her file to Health Canada. The grievor replied to Ms. Charbonneau-Jobin, stating that she had left the consent form at Dr. Demers's office but that he would not return from vacation until August 27, 2012.

[33] On August 29, 2012, Ms. Sabourin wrote to Dr. Demers, to ask him for a medical opinion on the grievor's fitness to work and her ability to perform her position's duties. She provided him a job description that was only in English. She also asked him whether medical retirement had to be considered if the grievor was no longer able to be reinstated to her functions. The grievor testified that it was the first time that the employer talked to her about medical retirement, that she did not know what it involved, and that neither did Dr. Demers. She also testified that Dr. Demers asked that he be sent a job description in French.

[34] On August 24, 2012, an assistant to the director informed Ms. Sabourin that for some time, he had had personal effects belonging to the grievor and that he would like to send them to her. Ms. Sabourin sent the request to Ms. Charbonneau-Jobin, for her opinion, who informed the grievor about it, to obtain her instructions.

[35] On November 12, 2012, Ms. Charbonneau-Jobin wrote to Ms. Sabourin, stating that she understood that the employer would soon send the grievor a letter accompanied by the forms required to start the medical-retirement approval process

by Health Canada. She informed Ms. Sabourin that she had spoken with the grievor and that she had advised the grievor to contact Mr. Dussault. Ms. Charbonneau-Jobin also informed her that she was leaving on maternity leave on November 16, 2012, and that Sara Boulé-Perroni would replace her. At the hearing, she also testified that she felt that she had fulfilled her role of representing the grievor.

[36] On November 21, 2012, the grievor received a letter from Mr. Raymond informing her that after it received Dr. Demers's medical opinion, the employer would contact Health Canada for its recommendation to grant her early retirement for medical reasons. Mr. Raymond also provided her with two forms for Dr. Demers to complete.

[37] The grievor testified that she never asked to take medical retirement and that the employer never asked her if she wanted to take it. It was on the employer's initiative. She said that her back was to the wall, since she was left with only three options: resign, return to work in six months, or take medical retirement. She also testified that she never received a letter from the employer explaining her options. Ms. Charbonneau-Jobin testified that such a letter was normally provided in situations like that of the grievor, who stated that she did not understand Health Canada's role at that time and that she was asked to complete forms without any explanation as to their contents. She testified that at that time, she did not know the steps that led to medical retirement, and that she never saw a Health Canada doctor.

[38] In any event, the grievor adduced into evidence her written medical-retirement application and Health Canada's approval of it. On February 18, 2013, she signed the claimant's application, which reads as follows: "[translation] I declare that I voluntarily submitted this application for retirement due to illness." She testified that at that time, she did not pay attention to what she had signed. On February 18, 2013, her attending doctor, Dr. Demers, signed the following statement:

> [Translation]
>
> *I, the undersigned and duly authorized attending doctor, certify that I have carried out a detailed examination of the above-mentioned employee and am of the opinion that this person is permanently unable to regularly perform a similarly paid occupation ….*

[39] On June 14, 2013, Dr. Joanna Bostwick of Health Canada approved the grievor's medical-retirement application. Dr. Bostwick's signature is preceded by this note: "[translation] This person's application for retirement under the terms of the Public Service Superannuation Act IS APPROVED on behalf of the deputy minister of Health Canada." The grievor testified that she received that medical-retirement-approval document.

[40] On August 9, 2013, the compensation manager, Nathalie Godin, wrote to Mr. Raymond and informed him that she had spoken with the grievor and that from a benefits perspective, the best retirement date for the grievor would be December 28, 2013. Then, on January 10, 2014, Ms. Godin wrote to the grievor and asked her to confirm the selected retirement date as soon as possible. On January 22, 2014, the grievor wrote to Ms. Godin and another person about a service buyback from a short period of employment in 1999. The grievor indicated that a document from the employer was missing to complete the buyback. Ms. Godin replied on January 27, 2014, stating that the grievor also had to sign a form for the service buyback.

[41] According to the adduced evidence, nothing happened in the grievor's medical retirement case in the next 22 months. Then, on December 10, 2015, she wrote to Mr. Dussault, who was the bargaining agent's pension and benefits specialist. She gave him the information from a voicemail that Ms. Godin left to her and from the discussion that followed. Ms. Godin then insisted that the grievor give her a retirement date, since Ms. Godin absolutely had to close the file before she left for new duties. She apparently told the grievor that otherwise, the file would be handed over to management, which would terminate her employment. That could have impacted her severance pay. She apparently also told the grievor that the grievor could not return to work once medical retirement had been approved. Finally, Ms. Godin then strongly suggested that the grievor retire on December 23, 2015. She added that the employer had agreed to wait to allow the grievor to sort out her service buyback and to benefit from the salary adjustments that applied to the CS group.

[42] On December 11, 2015, the grievor wrote to Mr. Landry, the compensation manager, and notified him that her employment end date would be "[translation] … January 28, 2016, for a medical retirement effective January 29, 2016". On December 15, 2015, he informed the bargaining agent that he would notify the Pension Centre and the Pay Centre in Miramichi, so that they could complete the final

documents and close the pay file. Then, on April 20, 2016, a bargaining agent representative wrote to the employer's Labour Relations Directorate, to inform it that the grievor had contacted him and informed him that she had not received anything from the Pension Centre since the acceptance of her retirement date of January 29, 2016. She also followed up with Mr. Landry on April 29, 2016, for an update. She testified that she never received a response from him.

[43] On June 16, 2016, Mélissa Leblanc, a pension-expert trainee at the Pension Centre, wrote to the grievor and informed her that she understood that the grievor's retirement date "[translation] … would be maybe January 29, 2016". She also wrote that she was still waiting for retirement documents from the employer's Human Resources branch. She also asked the grievor to notify her if the grievor challenged the retirement date.

[44] According to the evidence that was adduced, it appears that nothing happened in the grievor's retirement file between June 2016 and June 2017. No new medical information was sent during that period. In the meantime, she continued to receive Sun Life disability benefits.

[45] On June 15, 2017, the Public Service Pay Centre wrote to the grievor, to inform her that the employment termination date in force was January 29, 2016. She was then provided with the impact that the employment termination would have on the different benefits to which she was entitled. After she received that letter, she contacted Mr. Landry and the bargaining agent. She testified that it was unacceptable that she be forced to take retirement retroactively by 17 months.

[46] The grievor testified that she did not receive the retirement kit that is normally sent to retiring employees. However, on July 7, 2017, Mr. Landry emailed Labour Relations, copying to the bargaining agent, stating that a kit had been sent to the grievor twice, in December 2015 and in May 2016.

[47] On July 26, 2017, Jean Ouellette, a labour relations officer with the bargaining agent, wrote to the employer's labour relations director, Danielle Dauphinais, asking to change the January 29, 2016, retirement date to June 15, 2017. Ms. Dauphinais agreed to Mr. Ouellette's request to change the retirement date to June 15, 2017. In her July 28, 2017, letter, she wrote the following: "[translation] We accept the amended retirement date in conformance with s. 63 of the *Public Service*

Employment Act (*PSEA*)". The signature on the letter is illegible, but this can be seen: "[translation] For Danielle Dauphinais." However, according to the adduced evidence and the testimonies of Mr. Landry, Mr. Raymond, and Ms. Janvier, typically, the delegated manager signs that letter. In this case, the manager was Mr. Raymond.

[48] The grievor testified that she had serious health problems from May 2019 to November 2020, due to infectious bacteria. She also testified that her state of health was stable from 2015 to 2018. She testified that she was functional at the time, except for when she had "[translation] stressors" to manage. She also testified that her state of health gradually improved in early 2012. She then started to be told about an "[translation] ultimatum" after two years of disability, which did not help her.

[49] On October 13, 2020, the grievor wrote to Andrea Lawrie, a bargaining agent representative, to inform her of the hardship that she reportedly endured during a workforce-adjustment process. She wrote that the employer did not meet its collective agreement obligations. She also wrote that it allegedly put undue pressure on her to take medical retirement. On December 1, 2020, she more or less repeated those words in a letter to Claude Houde, the employer's director general of workplace relations and organizational health. Among other things, she wanted to know if she had received everything to which she had been entitled as part of the workforce adjustment and if her medical retirement had been approved in accordance with the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*).

[50] On December 13, 2020, Mr. Houde replied to the grievor and stated that he had asked Ms. Janvier and Mr. Landry to answer the questions in her December 1, 2020, letter. That was followed by exchanges between the grievor, Ms. Janvier, Mr. Landry, Mr. Raymond, and Marie-Claude Boisvert-Bégin, who was a disability management advisor for the employer.

[51] On February 4, 2021, Mr. Raymond wrote to the grievor, stating that in 2012, as of the workforce adjustment, the employer recommended that anyone on sick leave not be declared surplus until they returned to work. Since the grievor never returned to work and opted for medical retirement, no workforce-adjustment option was presented to her.

[52] In the weeks that followed, the grievor and the employer's representatives had other insignificant exchanges. By May 5, 2021, she still had not received answers to her

questions to Mr. Houde. On May 7, 2021, Daniel Pilon, the employer's director general of national accommodations planning, procurement, and asset management, wrote to the grievor and stated that he had read her file after Mr. Raymond retired, that he was satisfied that answers to her questions had been provided, and that her file had received all the attention that it deserved. On May 25, 2021, she wrote to Mr. Pilon, stating that she disagreed with him and that she had still not received answers to her questions. She testified that from that point, she tried to obtain assistance to continue with her file.

[53] On June 17, 2021, the grievor wrote to the employer's deputy minister. She stated a portion of her recriminations and sent the deputy minister the four grievances at issue in this case. She then briefly explained the reasons that justified the delay filing her grievances.

[54] The grievor testified that between October 2020 and June 2021, she stepped up her efforts to move her file forward. She wrote to the bargaining agent for assistance. At that moment, someone was assigned to her file. On December 1, 2020, she wrote to Mr. Houde. That was followed by several exchanges with the employer. Then in May 2021, the bargaining agent reportedly told her that it would not represent her. After that, the grievor consulted counsel, who assisted her.

[55] The grievor adduced into evidence several documents about problems or errors that occurred with reimbursing medical insurance claims. She also submitted documents about errors that were made when severance pay, statutory holiday, overtime, and other payable benefits were calculated. Parts of those problems or errors had already been corrected before the hearing.

[56] The grievor testified that the employer never met with her to discuss the workforce-adjustment process with her. She did not participate in its group information sessions. She also never received written information from it about what happened to her position. She adduced into evidence a document from the employer obtained through an access-to-information request. It contains the following note, dated July 2, 2013: "[translation] Ms. Desjardins agreed to medical retirement before being declared opting. Must confirm with management if she wants to be 'unaffected'. Awaiting - extended sick leave - DI". Mr. Raymond and Ms. Janvier testified that the

employer's practice was not to present workforce-adjustment options to employees on disability leave until they returned to work.

[57] In cross-examination, the grievor testified that between February 2010 and June 15, 2017, the effective date of her medical retirement, she never submitted a medical certificate confirming that she was fit for work. She also testified that she never submitted a workplace-accommodation request supported by a doctor's recommendation. Ms. Janvier also testified that no one ever spoke to her about the grievor's possible return to work. Finally, the grievor testified that the bargaining agent did not always advise her correctly and that it should have put more pressure on the employer to hold a meeting in 2012. According to her, solutions could have been found.

III. Summary of the arguments on the objections and the extension of time

A. For the employer

[58] The evidence set out that the grievor was absent from work starting on February 2, 2010, and that she began to receive disability benefits on May 4, 2010, which she still continues to receive.

[59] According to the medical documents on the record, the grievor became totally disabled in 2010. On September 10, 2012, her doctor signed a form that started the medical-retirement process. In it, he stated that she was "[translation] … permanently unable to regularly hold a similarly paid occupation …". Then, on February 18, 2013, she signed the same form, declaring that she voluntarily submitted an application for retirement due to illness. After that, on June 14, 2013, Health Canada approved the medical-retirement application.

[60] The medical retirement was postponed to late 2013, then to January 2016, and, finally, to June 2017. After the bargaining agent requested it, the employer accepted that the medical-retirement date would be June 15, 2017. That was when the grievor became eligible for pension benefits. However, her disability benefits were reduced.

[61] In 2020, more than three years after her employment was terminated, the grievor reported to the employer that she had suffered hardship. That was followed by written exchanges with the employer that ended on May 7, 2021, when it informed her

that it had answered all her questions. A few weeks later, on June 16, 2021, she filed her grievances.

[62] The grievor could not argue that her grievances are continuing. They deal with issues that she knew existed well before the 25-day time limit set out in the collective agreement. One cannot allow a hardship to drag on and then make a claim much later that it is continuing.

[63] The grievances were filed several years late, and the Board should deny the grievor's extension-of-time application. According to the case law, the most important factor for allowing such an application is the presence of clear and compelling reasons to justify filing a grievance late. However, in this case, such reasons do not exist. The grievor could have acted much earlier. She waited several years to act. In addition, the bargaining agent actively represented her, and she could have easily filed grievances in the prescribed time. She also could not claim that she was medically unable to act. In fact, during the time in which she could have filed grievances, she made access-to-information requests, interacted with the bargaining agent, interacted with the employer, and communicated with counsel. Clearly, she was capable of organizing her thoughts.

[64] Some of the grievances refer to amounts owed to the grievor. However, she knew no later than 2017 that those amounts were supposedly owed to her, yet she waited until 2021 to file a grievance about them.

[65] The employer also challenged the Board's jurisdiction to intervene in a situation involving a voluntary end to employment. In this case, the grievor sought to cancel her medical retirement and be reinstated to her position. She voluntarily applied for medical retirement, and the employer did not engage in any coercion or apply any pressure to force her to take it. Therefore, the Board cannot intervene by cancelling her retirement and reinstating her.

[66] The employer also challenged my jurisdiction on the ground that the grievor no longer had employee status when she filed her grievances. She lost it in June 2017, when she retired, and her grievances were filed in 2021.

[67] To support its arguments, the employer referred me to the following decisions: *Belisle v. Deputy Head (Department of Aboriginal Affairs and Northern Development)*,

2016 PSLREB 88; *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342; *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93; *Canada (Attorney General) v. Duval*, 2019 FCA 290; *Canada (Attorney General) v. Santawirya*, 2019 FCA 248; *Copp v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2013 PSLRB 33; *Dodd v. Canada Revenue Agency*, 2015 PSLREB 8; *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92; *Hassard v. Treasury Board (Correctional Service of Canada)*, 2014 PSLRB 32; *Lagacé v. Treasury Board (Immigration and Refugee Board)*, 2011 PSLRB 68; *Mutart v. Deputy Head (Department of Public Works and Government Services)*, 2013 PSLRB 90; *Nash v. Deputy Head (Canada Border Services Agency)*, 2023 FPSLREB 35; *Nehme v. Canada Revenue Agency*, 2023 FPSLREB 99; *Osborne v. Treasury Board (Department of Fisheries and Oceans)*, 2024 FPSLREB 5; *Pajic v. Statistical Survey Operations*, 2012 PSLRB 70; *Popov v. Canada (Attorney General)*, 2019 FCA 177; *Salain v. Canada Revenue Agency*, 2010 PSLRB 117; *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1; *Stevenson v. Treasury Board (Department of Employment and Social Development)*, 2016 PSLREB 17; and *Tuplin v. Canada Revenue Agency*, 2021 FPSLREB 29.

B. For the grievor

[68] First, the grievor presented a six-page document that in her view, is a good summary of the evidence presented at the hearing. Reviewing it would not be useful, as the evidence was already summarized in the last section of this decision.

[69] The employer simply ignored the medical information that was submitted to it and that was in favour of returning the grievor to work. Instead, it chose to prioritize medical retirement. By acting as it did, it discriminated against her, within the meaning of the collective agreement and the *CHRA*.

[70] In December 2015, Ms. Dauphinais, acting on the employer's behalf, refused to consider the grievor returning to work. In addition, medical retirement was never approved by the responsible manager, as set out in s. 63 of the *PSEA*.

[71] The grievances are not prescribed, since the grievor acted when she had access to the information that was central to them. She also had access to Dr. Cattan's report only after they were filed.

[72] She also learned only after the grievances were filed that her manager should have approved her medical retirement under s. 63 of the *PSEA*. In 2021, she asked questions, and no one from the employer could find the letter approving her medical retirement. The only thing in the file is a letter that someone signed in Ms. Dauphinais's name, who held a director position in human resources management.

[73] The file changed considerably, and the Phoenix system cannot be blamed for all the delays. For all the issues covered by the grievances, they were filed within the time limit. That includes the workforce-adjustment issues. Several items of relevant information were unknown to the grievor until after she made access-to-information requests. Moreover, she testified transparently, clearly, and credibly.

[74] The time limit could not have begun in June 2017, which was the retirement date. Only in March 2021 did the grievor learn that her retirement had not been approved in accordance with s. 63 of the *PSEA*. She persisted in asking the employer questions, and only on May 7, 2021, did it consider that the file was closed and that it had nothing more to tell her. Then there is also Dr. Cattan's report, which the grievor did not have access to in 2017.

[75] If the Board concludes that the grievances were filed after the prescribed time, then the grievor asked that the time limit for filing the grievances be extended, in the interest of fairness, as set out in s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*").

[76] For a large part of the period at issue, the grievor was in a vulnerable situation, due to her state of health. She constantly tried to obtain information, which was very difficult. Her medical retirement was implemented in June 2017, but the document for medical-retirement management to approve was never sent to her. Only much later, after her access-to-information requests and the advice or clarification that she received from people she knew, did she understand that her rights had not been respected.

[77] The length of the delay filing the grievances can be explained by the fact that the grievor did not have access to the information. Shortly after she received the information, she acted. She then exercised due diligence. In addition, she never stopped making efforts to obtain information from the employer.

[78] With respect to the injustice if the application to extend the time is refused, it would be devastating for the grievor both professionally and financially. That must take precedence over the hardship that the employer may suffer.

[79] The final factor to consider deals with the grievances' chances of success. This factor is seldom considered, unless a grievance has no chance of success. That is certainly not so for the grievor's grievances.

[80] The grievor did not agree with the employer, which challenged the Board's jurisdiction on the basis that the Board cannot intervene in a medical-retirement issue, as it was a voluntary departure. According to her, at issue in these grievances is not the voluntary departure but the conditions of employment, the collective agreement, discrimination, and the duty to accommodate. The Board has full jurisdiction to deal with the grievances.

[81] The grievor also did not agree with the employer's objection that she was no longer an employee within the meaning of the *Act* when she filed her grievances, since she was no longer its employee. All the facts that support the grievances date from before June 15, 2017, even though she did not know them all on that date. Therefore, this objection must be dismissed.

[82] To support her arguments, the grievor referred me to the following decisions: *Santawirya*; *Nehme*; *Kokozaki v. Canada Revenue Agency*, 2022 FPSLREB 75; *Gosselin v. Canada (Attorney General)*, 2023 FC 853; *Tremblay v. Treasury Board (Department of Public Works and Government Services)*, 2020 FPSLREB 82; and *Richard v. Canada Revenue Agency*, 2005 PSLRB 180.

IV. Grounds for the objections and the extension of time

A. Were the grievances filed late?

[83] To address this issue, I must first identify the true nature or very essence of these grievances. Remember that they include about 38 statements and several corrective measures.

[84] In *Public Service Alliance of Canada v. Treasury Board (Department of Human Resources and Skills Development)*, 2012 PSLRB 84, the adjudicator wrote the following at paragraph 41:

> *[41] …The bargaining agent submitted that the essence of a grievance must be determined by examining the grievance as a whole, which also means considering the requested corrective action. I agree with that proposition.*

[85] A portion of the grievance statements could not be referred to adjudication. It does not appear to me that the grievor claimed the opposite, as this issue was not addressed during the hearing. Instead, in the statements, I see items or arguments to support her theory that she was a harassment victim and that she was not treated correctly in the process that led to her taking medical retirement and in the workforce-adjustment process. At first glance, the very essence of the grievances or their core nature seems to cover the harassment that the grievor reportedly suffered, how the employer treated her with respect to medical retirement, how it treated her with respect to the workforce adjustment, and the errors that occurred with respect to the benefits and advantages to which she was entitled.

[86] This interpretation is confirmed by reviewing the corrective measures that the grievor requested. In fact, she requested the following: a) financial compensation for the harassment that she suffered; b) being returned to the workforce retroactive to 2010; c) a statement that she is surplus retroactive to 2014 and "[translation] opting"; and d) the employer's reimbursement of the amounts and tax implications that these measures imply. In addition, the evidence adduced at the hearing and the argument of the grievor's representative cover primarily those four topics.

[87] I will deal with those topics in turn, and based what on the parties submitted to me, I will determine whether the grievor filed her grievances within the 25-day time limit prescribed by clause 33.12 of the collective agreement, which reads as follows:

33.12 *A grievor may present a grievance to the first step of the procedure in the manner prescribed in clause 33.06, 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.…*	***33.12*** *L'auteur du grief peut présenter un grief au premier palier de la procédure de la manière prescrite au paragraphe 33.06, au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle l'auteur du grief est informé ou devient conscient de l'action ou des circonstances donnant lieu au grief* […]

[88] Recall that the grievances were filed on June 16, 2021.

[89] According to the grievor's grievances and testimony, her supervisor harassed her no later than 2010, which caused her to experience severe depression that led to sick leave in February 2010. She never returned to work after that.

[90] The grievor could also have argued that certain actions, decisions, or behaviours by Ms. Sabourin, Ms. Godin, or Mr. Raymond between 2012 and 2017 constituted harassment. I would not necessarily agree with such an argument, at least on the basis of the adduced evidence, but that is not the issue at the moment.

[91] The evidence set out that the grievor was regularly in contact with the bargaining agent at the time. However, she did not file any grievances to challenge the employer's supposedly improper conduct, even if she could have done so.

[92] Even though the grievor did not retire until June 2017, she formally applied for it on February 18, 2013, and she then stated that her application was submitted voluntarily. Her attending doctor, who had monitored her for several years, then certified that she was unable "[translation] … permanently to regularly hold a similarly paid occupation …". In February 2013, Health Canada approved the medical retirement. That said, she testified that she never requested medical retirement. According to her, it was the employer's initiative; it put her back to the wall by leaving her with only three options: resign, return to work in six months, or take medical retirement.

[93] For several reasons, things carried on for a few years. Then, in December 2015, the grievor had exchanges with the bargaining agent after the employer's requests that she choose an upcoming retirement date. On December 11, 2015, she notified the employer that her employment termination date would be January 28, 2016, and that her medical retirement would start the next day. Things carried on some more. Then, on June 15, 2017, the employer's Pay Centre notified her that her retirement date would be January 29, 2016. She then contacted the bargaining agent, to challenge the fact that a 17-month retroactive retirement was being imposed on her. It requested that the retirement date be changed to June 15, 2017. Ms. Dauphinais, acting in the employer's name, accepted the bargaining agent's request.

[94] Once again, the evidence revealed that the grievor was in constant contact with the bargaining agent about her retirement. Between 2012 and 2017, she could have filed a grievance to challenge the fact that the employer apparently pushed her to take

retirement or even the long administrative delay or any other supposedly improper conduct on its part. However, she did not.

[95] According to the adduced evidence, on April 16, 2012, the employer notified the grievor in writing that her position had been identified as "[translation] affected" and that her services might no longer be required by the end of the workforce-adjustment process. She stated that she called the bargaining agent after receiving that letter. The evidence revealed that she was waiting for a meeting with the bargaining agent and the employer to discuss the situation but that for several reasons, it never took place. Remember that the grievor submitted an official medical-retirement application in 2013.

[96] Only in 2020 did the workforce-adjustment issue resurface in a letter that the grievor sent to the employer. According to her, apparently, it had not respected the obligations that the collective agreement had imposed on it. According to Mr. Raymond, in 2012, it decided that employees on sick leave would not be declared surplus as long as they were absent from work. In his view, no option was offered to the grievor because she had opted for medical retirement.

[97] In 2012, the grievor had frequent contact with the bargaining agent during the workforce-adjustment process. Even if she could have done it, she did not file any grievances to challenge the fact that the employer did not offer her the workforce-adjustment benefits set out in the collective agreement.

[98] Finally, the grievor adduced into evidence several documents about problems or errors with reimbursing medical claims, calculation errors with respect to her severance pay, statutory holidays, overtime, and other benefits payable upon her departure in June 2017.

[99] The grievor was well aware of these issues in the weeks that followed her departure on retirement in June 2017. However, she did not file any grievances to correct the situation.

[100] Well after retiring, the grievor obtained additional information about her retirement and the workforce-adjustment process. Then, in October 2020, she wrote to the bargaining agent, to inform it of the injustice that she believed she had suffered. In December 2020, she contacted the employer, informing it of her concerns. She also

asked whether she had received everything to which she was entitled during the workforce-adjustment process and whether her medical retirement had been approved in accordance with the *PSEA*. Her exchanges with the employer followed until May 2021, when it notified her that her file had received all the attention that it deserved. She testified that in May 2021, the bargaining agent would have told her that it would no longer represent her. She then consulted counsel, who helped her. That was followed by filing grievances on June 17, 2021, four years to the day after she retired.

[101] The grievor claimed that she was a harassment victim, treated unfairly in the workforce-adjustment process, and pushed against her will into retirement, particularly since apparently, the retirement was not approved as it should have been under the *PSEA*. She knew or should have known all this in June 2017, when she retired. Until June 2017, the bargaining agent and its specialists accompanied her at all the important moments. Indeed, the arguments to support her claim that her rights were apparently not respected were supported by the documents that she received through access-to-information requests. However, the fact remains that the essence of the issues covered by the grievances should have been known in June 2017 or in the weeks that followed, for some of them.

[102] It is not when a grievor realizes a few years later that he or she might have been aggrieved that the 25-day time limit starts that is set out in the collective agreement. Instead, it is when he or she is informed or becomes aware of the action or circumstances that give rise to the grievance. There is an important nuance. In June 2017 or in the weeks that followed, the grievor was, or at the very least should have been, aware that she had been harassed, that she was unduly "[translation] pushed" into medical retirement, and that the employer did not respect her rights in the workforce-adjustment process. She was so aware of the actions or circumstances that gave rise to the grievance that the bargaining agent accompanied and guided her. Indeed, she claimed that it no longer wanted to represent her, but that supposed refusal occurred in 2021, not in 2017.

[103] I can comprehend that due to her state of health, the grievor was not able to file a grievance at any time between 2010 and 2017. However, there were times during those roughly seven years when she was able to, especially since between 2010 and 2017, at the risk of repeating myself, she had regular contact with the

bargaining agent. She also testified that her state of health was stable between 2015 and 2018 and that at that time, she was functional.

[104] The grievor chose to wait several years to file her grievances. Her multiple access-to-information requests gave her more arguments to support her grievances. However, this did not change the fact that what was challenged occurred well before the grievances were filed.

[105] Therefore, I allow the employer's objection that the grievances were not filed within the time limit set out in the collective agreement.

B. The application to extend the time limit to file a grievance

[106] The grievor's application to extend the time limit to file the grievances was made under s. 61(b) of the *Regulations*, which reads 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 extended, either before or after the expiry of that time,*	***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 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.*

[107] The parties rightly submitted that the Board regularly uses the *Schenkman* criteria to analyze extension-of-time applications. These criteria are clear, cogent, and compelling reasons for the delay; the length of the delay; the applicant's due diligence; the balance between the injustice to the applicant and the prejudice to the respondent from granting an extension; and the grievance's chance of success.

[108] Even though those criteria are assessed in their entirety, they are not necessarily of equal importance (see *Schenkman* and *Lagacé*, among others). The submitted facts must be reviewed, to decide the evidentiary value of each criterion. Sometimes, not all of the criteria are applicable, or only one or two weigh in the balance. In the absence of clear, cogent, and compelling reasons to justify the delay, the other criteria lose a great deal of their importance.

[109] The jurisprudence is clear in the sense that the time limit to which the parties agreed and placed in the agreement must be respected. Extending it should be the exception and not the rule. On that point, I share entirely the Board Member's remarks in *Salain*, which were later repeated in *Tuplin*. Paragraph 44 of *Salain* reads as follows: "Time limits are meant to be respected by the parties and should be extended in exceptional only [*sic*] circumstances. Those circumstances always depend on the facts of each case."

[110] In the same sense, in *Grouchy*, the Board Member wrote the following at paragraph 46:

> *[46] Before applying those criteria to the facts of this case, I wish to make the following general comments. In principle, time limits set by the* Act *and the* Regulations *are mandatory and should be respected by all parties. Having relatively short time limits 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. Time limits are not elastic, and extending them should remain the exception and should occur only after the decision maker has made a cautious and rigorous assessment of the circumstances.*

[111] I do not see exceptional circumstances with respect to the grievor's delay filing her grievances. In fact, based on what was submitted to me, I conclude that she did not justify the delay with clear, cogent, and compelling reasons.

[112] I will not repeat in detail the circumstances of the grievor's delay filing her grievances after the 25-day time limit set out in the collective agreement. However, the circumstances reveal the reasons that justify the delay. It seems that she realized a few years late that she might have been aggrieved when she was allegedly harassed, that she was unduly "[translation] pushed" into medical retirement, and that the employer did not respect her rights during the workforce-adjustment process. It appears that

after reviewing the documents received through access-to-information requests, examining the employer's answers in 2020 and 2021, and consulting counsel, she decided to file grievances. Indeed, this clearly explains why she filed them only in 2021, but those are certainly not compelling reasons within the meaning provided by the case law to justify the delay, especially since bargaining agent representatives accompanied her between 2010 and 2017.

[113] The grievor's fragile state of health might partly explain the delay, but as in *Osborne*, only a portion of it. The evidence revealed that between 2010 and 2017, she was very ill for certain periods. However, for others, she was able to act, in the sense that she regularly sought the bargaining agent's advice. She also testified that she was functional between 2015 and 2018. Then, after 2017, she made several access-to-information requests. Finally, as of late 2020, she once again contacted the bargaining agent and sent several requests to the employer. Remember that she filed her grievances only in June 2021.

[114] I will add that nothing in the evidence leads me to believe that errors by the bargaining agent could explain the delay filing a grievance, as in *Tremblay*, for example. Indeed, the grievor testified that the bargaining agent did not want to help her in 2021. However, it is in no way responsible for the delay of more than three years filing the grievances.

[115] In summary, the grievor did not present me with clear, cogent, and compelling reasons to support her extension-of-time application.

[116] The length of the delay varies based on the issues for which the grievances were filed. If the grievor's superior harassed her, it took place about 10 years before the grievances were filed. As for the other harassment situations that she allegedly suffered, they occurred between 2012 and 2017. Her delay challenging her medical retirement was at least four years, and her challenge of the workforce-adjustment process was even longer.

[117] Those were considerable delays. It is true that the grievor could not act for a portion of them, but she was able to act for several months and even for a few years during that period (see *Popov* and *Osborne*).

[118] The grievor did not demonstrate due diligence challenging the employer's decisions. She waited several years before doing it. She filed grievances only after she obtained information through access-to-information requests and after consulting counsel. Diligence must be assessed not from when the grievor believed that she had a chance of success from filing grievances but instead from when she was informed or became aware of the factors that might have given rise to grievances. She knew of those factors no later than 2017.

[119] With respect to the balance between the injustice caused to the applicant and the prejudice to the respondent were the extension granted, it seems to me at first glance that the negative consequences of denying it would be greater for the grievor than for the employer. In fact, if I denied it, the grievor would lose her recourse. For the employer, the negative consequences would be that I would allow the application and then allow some or all of the grievances. In any case, in the absence of clear, cogent, and compelling reasons for the delay, this criterion loses its importance.

[120] At the bargaining agent's request, and given the nature of this case, I agreed to hear all the evidence and arguments for both the objections and the merits before ruling on the objections. Therefore, I am able to determine whether the grievor's grievances have any chance of success. It is more suitable to ask me, at this stage of the analysis, whether they have "[translation] no chance" of success. If, at first glance, they have no merit at all, it may then be a factor to consider (see *Schenkman*, at para. 83). In this case, I cannot say that the grievances would have no chance of success.

[121] In summary, I do not see how, in the interests of fairness, I would agree in this case to extend the 25-day time limit that the parties agreed to when they negotiated the collective agreement, given that the grievor did not justify her delay of a few years before filing her grievances using clear, cogent, and compelling reasons.

C. The employer's other objections

[122] Since I have concluded that the grievances were filed late, and I have denied the extension-of-time application, it is not necessary to analyze the employer's other objections.

V. Reasons on the merits of the grievances

[123] As I mentioned earlier, I agreed to the bargaining agent's request to hear all the parties' evidence on the objections, the application to extend the time, and the grievances' merits in a single hearing. It took place in three parts; that is, nine days to hear the evidence, and two other days for the parties' arguments.

[124] Considering that I have already allowed the employer's objection that the grievances were filed after the time limit set out in the collective agreement and that I have dismissed the grievor's application to extend the time limit to file her grievances, there is no need to include a summary of the parties' arguments on the merits of the grievances in my decision.

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

(The Order appears on the next page)

VI. Order

[126] The employer's objection is allowed that the grievances were not filed within the time limit set out in the collective agreement.

[127] The application for an extension of time is dismissed.

[128] Because the grievances were not filed within the time limit set out in the collective agreement, they could not have been referred to adjudication. Board file no. 566-02-44552 is closed.

August 13, 2024.

FPSLREB Translation

Renaud Paquet,
a panel of the Federal Public Sector
Labour Relations and Employment Board