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*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

DELTİ BECKER

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as

Becker v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Brian Russell, a panel of the Federal Public Sector Labour Relations and Employment Board

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

For the Employer: Nick Gualtieri

Decided on the basis of written submissions,
filed August 8, 2023, and May 1, and September 3 and 4, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] The grievor, Delti Becker, filed an individual grievance contesting the Canada Revenue Agency's ("the employer") decision rejecting his accommodation request on religious grounds in accordance with the *Policy on COVID-19 Vaccination for the Canada Revenue Agency* ("the Policy").

II. Objection to the grievance referred to adjudication

[2] On July 20, 2023, the grievor referred an individual grievance to adjudication pertaining to the employer's decision to reject his religious-belief accommodation to the COVID-19 vaccine. The grievance was referred to adjudication under ss. 209(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2). On August 8, 2023, the employer filed preliminary objections with respect to timeliness, the changed nature of the grievance, and the Federal Public Sector Labour Relations and Employment Board's ("the Board") authority to hear the grievance, as it did not pertain to discipline.

[3] On May 1, 2024, the grievor filed submissions concerning the employer's preliminary objections.

[4] On the same day, the parties were invited to provide additional written submissions, which they did not provide.

[5] Per s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365), the Board may decide any matter before it without holding an oral hearing.

[6] This decision deals with the employer's objection to the timeliness of the grievance. Its objection with respect to the changing nature of the grievance and the Board's authority to hear it, as it does not pertain to discipline, will not be addressed in this decision. To decide those objections, a review of the facts and the evidence with respect to the grievance is necessary.

[7] For the reasons that follow, the employer's objection to the timeliness of the grievance is dismissed.

III. Background

[8] The *Policy* came into effect on November 8, 2021, and applied to all employees working for the employer. The *Policy* required employees to be fully vaccinated unless they were granted an exemption based on a prohibited ground of discrimination under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

[9] Per the *Policy*, employees were required to disclose their vaccination status to the employer by attesting to it before the November 26, 2021, deadline expired. Employees who were unwilling to disclose their vaccination status by that date were required to complete online training on COVID-19 vaccination. Employees who were unwilling to disclose it after the online training or who did not have their accommodation requests approved were to be placed on administrative leave without pay.

[10] On November 18, 2021, the grievor submitted a request for religious accommodation to the employer. On March 10, 2022, the employer denied his request. It gave him a deadline of March 24, 2022, to comply with the *Policy*. Events occurred after that date but are not relevant to the issue at hand. As such, I have decided not to include them in this decision.

IV. Summary of the evidence

[11] On March 3, 2022, the grievor filed his grievance.

[12] The relevant collective agreement between the employer and the Public Service Alliance of Canada, which expired on October 31, 2021 (“the collective agreement”), provides for four levels in the grievance process: the first, second, third, and final levels.

[13] The employer issued a response at the first level of the grievance process, denying the grievance, on March 11, 2022. The deadline to transmit the grievance to the second level was March 25, 2022. On March 28, 2022, the grievance was transmitted to the second level. The grievor bypassed the second level, and the grievance was transmitted to the third level.

[14] In their written submissions, the parties used the term “bypass” to explain what occurred at the second level. I asked them to explain the meaning of that term because it is not in the relevant collective agreement clauses.

[15] Both parties indicated that the term “bypass” means that the grievor elected to waive the second level per clause 18.08 of the collective agreement, and the grievance was transmitted to the third level.

[16] On August 5, 2022, the employer issued a third-level response. It denied the grievance because it received the transmittal of the grievance to the third level outside the 10-day time limit to transmit a grievance to the next level of the grievance process.

[17] On June 13, 2023, the employer issued a final-level response, denying the grievance. It indicated that it denied the grievance because it received the referral to the second level outside the 10-day time limit specified in the collective agreement.

V. Summary of the arguments

A. For the employer

[18] The employer objects to the Board’s jurisdiction to hear the grievance on the basis that the second-level grievance was untimely. The employer submits that per the collective agreement, the grievor had 10 days to transmit his grievance to the second level. Since the grievance response was issued on March 11, 2022, the grievor had until March 25, 2022, to transmit the grievance to the second level. He transmitted it to the second level on March 28, 2022, which was outside the 10-day time limit prescribed in the collective agreement.

B. For the grievor

[19] The grievor submits that the employer has not met the requirement in s. 95(2) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; “the *Regulations*”) because the grievance was not rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.

[20] According to the grievor, the employer did not raise its objection to timeliness at the second level. In its third-level grievance response, it objected because the grievance was transmitted to the third level outside the 10-day limit. In the final-level grievance response, it objected because the grievance was transmitted to the second level outside the 10-day limit.

VI. Reasons

[21] Article 18, entitled “Grievance procedure”, of the collective agreement outlines the time limit for the parties to file a grievance, respond to one, and transmit one to the next level. The collective agreement also allows the parties to waive or eliminate a level in the grievance process. It states the following:

...	[...]
18.08 <i>There shall be no more than a maximum of four (4) levels in the grievance procedure:</i>	18.08 <i>La procédure de règlement des griefs comporte un maximum de quatre (4) paliers :</i>
<i>a. Level 1 - first (1st) level of management;</i>	<i>a. le palier 1 - premier (1er) palier de direction;</i>
<i>b. Levels 2 and 3 - intermediate level(s), where such level or levels are established in the CRA;</i>	<i>b. les paliers 2 et 3 - palier(s) intermédiaire(s), lorsqu'il existe de tel(s) palier(s) à l'ARC;</i>
<i>c. Final level - the Commissioner or their authorized representative.</i>	<i>c. le palier final - le Commissaire ou son représentant autorisé.</i>
<i>Whenever there are four (4) levels in the grievance procedure, the grievor may elect to waive either Level 2 or 3.</i>	<i>Lorsque la procédure de règlement des griefs comprend quatre (4) paliers, le plaignant peut choisir de renoncer soit au palier 2, soit au palier 3.</i>
...	[...]
18.11 <i>An employee may present a grievance to the first (1st) level of the procedure in the manner prescribed in clause 18.06, not later than the twenty-fifth (25th) day after the date on which they are notified orally or in writing or on which they first become aware of the action or circumstances giving rise to grievance.</i>	18.11 <i>Au premier (1er) palier de la procédure, l'employé peut présenter un grief de la manière prescrite au paragraphe 18.06 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle l'employé est notifié, oralement ou par écrit, ou prend connaissance, pour la première fois, de l'action ou des circonstances donnant lieu au grief.</i>
18.12 <i>The Employer shall normally reply to an employee's grievance at any level of the grievance procedure, except the final level, within ten (10) days after the grievance is presented, and within thirty (30) days when the grievance is presented at the final level.</i>	18.12 <i>L'Employeur répond normalement au grief d'un employé, à tous les paliers de la procédure de règlement des griefs, sauf au dernier, dans les dix (10) jours qui suivent la date de présentation du grief au dit palier, et dans les trente</i>

	(30) jours lorsque le grief est présenté au palier final.
18.13 An employee may present a grievance at each succeeding level in the grievance procedure:	18.13 L'employé peut présenter un grief à chacun des paliers suivants de la procédure de règlement des griefs :
a. where the decision or offer for settlement is not satisfactory to the employee, within ten (10) days after that decision or offer for settlement has been conveyed in writing to the employee by the Employer, or	a. si l'employé est insatisfait-e de la décision ou de l'offre de règlement, dans les dix (10) jours suivant la communication par écrit de cette décision ou offre de règlement par l'Employeur à l'employé; ou
b. where the Employer has not conveyed a decision within fifteen (15) days from the date that a grievance is presented at any level, except the final level, the employee may, within the next ten (10) days, submit the grievance at the next higher level of the grievance procedure.	b. si l'Employeur ne lui communique pas une décision dans les quinze (15) jours qui suivent la date de présentation du grief à tous les paliers, sauf au dernier, l'employé peut, dans les dix (10) jours suivants, présenter le grief au palier suivant de la procédure de règlement des griefs.
...	[...]
18.16 Where it appears that the nature of the grievance is such that a decision cannot be given below a particular level of authority, any or all the levels except the final level may be eliminated by agreement of the Employer and the employee, and, where applicable, the Alliance.	18.16 Lorsque la nature du grief est telle qu'une décision ne peut être rendue au-dessous d'un palier d'autorité donné, l'Employeur et l'employé et, s'il y a lieu, l'Alliance, peuvent s'entendre pour supprimer un palier ou tous les paliers, sauf le dernier.
18.17 Where the Employer demotes or terminates an employee for cause pursuant to paragraph 51(1)(f) or (g) of the Canada Revenue Agency Act, the grievance procedure set forth in this Agreement shall apply, except that the grievance may be presented at the final level only.	18.17 Lorsque l'Employeur rétrograde ou licencie un employé pour un motif déterminé aux termes de l'un des alinéas 51(1)f) ou g) de la Loi sur l'Agence du revenu du Canada, la procédure de règlement des griefs énoncée dans la présente convention s'applique, sauf que le grief n'est présenté qu'au dernier palier.
18.18 An employee may by written notice to their immediate supervisor or officer-in-charge withdraw a grievance.	18.18 L'employé peut renoncer à un grief en adressant une notification par écrit à cet effet à son surveillant immédiat ou son chef de service.

18.19 Any employee who fails to present a grievance to the next higher level within the prescribed time limits shall be deemed to have abandoned the grievance unless, due to circumstances beyond their control, they were unable to comply with the prescribed time limits.

...

18.19 L'employé qui néglige de présenter son grief au palier suivant dans les délais prescrits est réputé avoir renoncé à son grief, à moins que l'employé ne puisse invoquer des circonstances indépendantes de sa volonté qui l'ont empêché de respecter les délais prescrits.

[...]

[22] In this case, the grievance response was issued on March 11, 2022, and the grievance was transmitted to the second level on March 28, 2022. That was one day outside the time limit.

[23] The *Regulations* outline the requirements that a party making a timeliness objection must meet. They state the following:

...

[...]

95 (1) A party may, no later than 30 days after being provided with a copy of the notice of the reference to adjudication,

(a) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the presentation of a grievance at a level of the grievance process has not been met; or

(b) raise an objection on the grounds that the time limit prescribed in this Part or provided for in a collective agreement for the reference to adjudication has not been met.

(2) The objection referred to in paragraph (1)(a) may be raised only if the grievance was rejected at the level at which the time limit was not met and at all subsequent levels of the grievance process for that reason.

...

95 (1) Toute partie peut, au plus tard trente jours après avoir reçu copie de l'avis de renvoi du grief à l'arbitrage :

a) soulever une objection au motif que le délai prévu par la présente partie ou par une convention collective pour la présentation d'un grief à un palier de la procédure applicable au grief n'a pas été respecté;

b) soulever une objection au motif que le délai prévu par la présente partie ou par une convention collective pour le renvoi du grief à l'arbitrage n'a pas été respecté.

(2) L'objection visée à l'alinéa (1)a) ne peut être soulevée que si le grief a été rejeté au palier pour lequel le délai n'a pas été respecté et à tout palier subséquent de la procédure applicable au grief en raison de ce non-respect.

[...]

[24] For the employer's timeliness objection to be granted, it had to be raised at the level that the time limit was not met and at all subsequent levels for that reason. The grievor takes the position that the employer was barred from raising its objection because it did not object to the timeliness of the second-level transmittal at the second level of the grievance process and at every subsequent level.

[25] I have carefully reviewed the parties' written submissions, and I am not able to grant the employer's timeliness objection. In its written submissions, it outlined the following sequence of events:

- March 3, 2022: the grievor filed his grievance.
- March 11, 2022: the first-level response, denying the grievance, was issued.
- March 25, 2022: this was the deadline for transmitting the grievance to the second level.
- March 28, 2022: the grievor transmitted the grievance to the second level.
- The second level was bypassed, and the grievance was referred to the third level.
- August 5, 2022: the third-level response, denying the grievance for being untimely at the third level, was issued.
- June 13, 2023: the final-level response, denying the grievance for being untimely at the second level, was issued.

[26] The second level of the grievance process was bypassed. The employer did not issue a response to the grievance at the second level after it had been transmitted to that level outside the time limit.

[27] The *Regulations* are clear; a party may raise an objection with respect to timeliness only if the grievance was rejected at the level that the time limit was not met and at all subsequent levels of the grievance process for that reason. I find that the employer did not comply with s. 95 of the *Regulations* because it did not raise the timeliness objection at the level of the grievance process at which the time limit was not met, which was the second level. Accordingly, such an objection could not have been raised with Board.

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

(The Order appears on the next page)

VII. Order

[29] The employer's objection with respect to timeliness is dismissed.

October 23, 2024.

**Brian Russell,
a panel of the Federal Public Sector
Labour Relations and Employment Board**