

**Date:** 20241024

**Files:** 566-02-47286 and 47287

**Citation:** 2024 FPSLREB 146

*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

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BETWEEN

**CRAIG MACARTNEY**

Grievor

and

**TREASURY BOARD  
(Department of Fisheries and Oceans)**

Employer

Indexed as

*MacArtney v. Treasury Board (Department of Fisheries and Oceans)*

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:** Leslie Robertson, Public Service Alliance of Canada

**For the Employer:** Erin Saso

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Decided on the basis of written submissions,  
filed June 5, 2023, and June 3 and July 15 and 31, 2024.

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**REASONS FOR DECISION**

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**I. Individual grievance referred to adjudication**

[1] On May 1, 2023, Craig MacArtney (“the grievor”) referred a grievance to adjudication with the Federal Public Sector Labour Relations and Employment Board (“the Board”). It was referred under both ss. 209(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2); therefore, two files were created. The grievor alleged breaches of article 19, entitled “No Discrimination”, and article 6, entitled “Managerial Responsibilities”, of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services (PA) group that expired on June 20, 2021 (“the collective agreement”) and s. 7(b) of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6; “the CHRA”) (Board file no. 566-02-47286) and discipline that gave rise to a termination, suspension, demotion, or financial penalty (Board file no. 566-02-47287).

[2] The grievance is with respect to the decision by the Department of Fisheries and Oceans (“the employer”) to deny the grievor’s request for accommodation, on religious grounds, with respect to the Treasury Board’s *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“the Policy”).

[3] On June 5, 2023, the employer acknowledged the referral to adjudication and raised a preliminary objection that the Board is without jurisdiction to hear the grievance because it is untimely. The employer requested that the Board deal with this objection as a preliminary matter.

[4] The parties were invited to make additional written submissions with respect to the timeliness issue, which each party did. In response to the employer’s preliminary objection, the grievor took the position that the Board has jurisdiction to hear this grievance because it is timely. He considers the incident that gave rise to the grievance being placed on administrative leave without pay (LWOP) and not being notified of the employer’s decision on his request to be accommodated on religious grounds.

[5] This decision deals with the employer’s objection to timeliness.

[6] 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.

[7] For the reasons that follow, I dismiss the employer's objection. I find that the grievance was filed within the time limit set out in the collective agreement.

## II. Summary of the evidence

[8] On October 6, 2021, the Policy took effect. Under it, the grievor had until October 29, 2021, to attest to his vaccination status.

[9] On a date that was not disclosed to me, the grievor requested an exemption from the Policy, on religious grounds.

[10] On November 19, 2021, the employer advised the grievor that his request was denied. It gave him a deadline of two weeks to attest to his vaccination status. If he did not do it by that deadline, then he had an additional two weeks to attend a training session on COVID-19 vaccinations. If the grievor did not receive his first dose within that two-week period, then he would be placed on LWOP. The employer also advised him of his right to grieve the decision.

[11] On November 22, 2021, in response to the grievor's question about appealing the decision to deny his accommodation request, the employer advised him of his right to file a grievance or to contact his bargaining agent, to discuss recourse options.

[12] On December 17, 2021, the grievor was placed on LWOP.

[13] On January 12, 2022, the grievor filed his grievance, which states this:

...

*I grieve the employer's failure to accommodate me by refusing to grant me an exemption to the mandatory vaccination policy on the basis of religious belief, in violation of Article 19 (No discrimination) and section 7(b) of the CHRA.*

*I further grieve not being permitted to continue with my telework arrangement, which was a condition for my [sic] accepting this job.*

...

[14] As corrective action, the grievor requested the following:

...

*1. That my request for an accommodation based on my religious beliefs be granted forthwith and I be immediately reinstated to my*

*indeterminate position, effective to the date of my suspension and being placed on leave without pay.*

*2. That my existing telework agreement be immediately resumed, particularly while the vaccine policy is in effect.*

*3. That all discrimination on the prohibited ground relative to my Religious Beliefs immediately cease and never reoccur.*

*4. That I be paid all salary and benefits I would have received had I not been suspended and placed on leave without pay.*

*5. I request damages pursuant to subsection 53(2)e and 53(3) of the CHRA and reimbursement of all financial losses incurred.*

*6. That I be formally accommodated according to my religious beliefs, relative to the vaccination policy.*

*7. That the executives responsible for this decision, who denied my request for accommodation based on religious belief, receive training on the duty to accommodate.*

*8. I request to be made whole.*

[15] The employer denied the grievance at all three levels of the grievance procedure because it was untimely and did so within the time limit set out in the collective agreement.

### **III. Summary of the arguments**

#### **A. For the employer**

[16] The employer submits that the grievance is untimely. It advised the grievor of its decision to deny his accommodation request on November 19, 2021, and considers this the incident that gave rise to the grievance. According to the employer, the grievor submitted his grievance on January 25, 2022, which was 44 days after he was advised of the employer's decision. That was outside the time limit in the collective agreement, and as such, the Board lacks jurisdiction, and the reference to adjudication should be dismissed.

#### **B. For the grievor**

[17] The grievor submits that the grievance is timely. He considers the incident that gave rise to the grievance was the date that he was being placed on LWOP, December 17, 2021, and not being notified that his accommodation request was denied. According to him, the grievance is dated January 12, 2022, which is within the time limit set out in the collective agreement. Consequently, he submits that the Board has

jurisdiction to hear the grievance and that the employer's objection should be dismissed.

#### **IV. Reasons**

[18] I have reviewed the parties' submissions, and to decide the employer's objection, I must first determine the essence of the grievance, because that affects the incident that gave rise to it. That incident establishes the date that the grievance should have been filed and whether it was timely.

[19] *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93 at para. 37, offers helpful guidance to determine the nature of a grievance. It states as follows:

*[37] ... Grievances are rarely well-crafted legal documents, and it is necessary to look at them in the context of the facts, as well as their wording. To determine the nature of a grievance, it is also necessary to look at both the details section as well as the requested corrective action....*

[20] In the grievance details, the grievor identifies these two issues:

- 1) The employer's failure to accommodate him by refusing to grant him an exemption to the Policy on the basis of his religious belief, which he contends violated the collective agreement and the *CHRA*.
- 2) Not being permitted to continue with his telework arrangement.

[21] In the requested corrective action, the grievor identifies elements that he would like with respect to his accommodation request. He also identifies being paid the salary and benefits that he would have received had he not been placed on LWOP and being reinstated to his position, along with the employer resuming his telework agreement.

[22] Based on the wording of the grievance and the corrective action requested, I find that the grievance is about the employer's decision not to accommodate the grievor, along with the LWOP and the salary that was forfeited. This is expressed in the corrective action.

[23] The grievor was placed on LWOP on December 17, 2021, which is the incident that gave rise to the issues that were grieved.

[24] I note that the parties do not agree on the date that the grievance was filed. According to the employer, the grievance was filed on January 25, 2022. But the grievor claims that he filed it on January 12, 2022. The date has no bearing on my decision because regardless of the date, the grievance was filed within the time limit set out in the collective agreement.

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

*(The Order appears on the next page)*

**V. Order**

[26] The employer's objection to timeliness is dismissed.

[27] The grievance will be set down for a hearing according to the Board's scheduling process.

October 24, 2024.

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