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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

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BETWEEN

**RON CAMPBELL**

Grievor

and

**TREASURY BOARD  
(Royal Canadian Mounted Police)**

Employer

Indexed as

*Campbell v. Treasury Board (Royal Canadian Mounted Police)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Morgan Rowe, counsel

**For the Employer:** Valerie Taitt, analyst

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Decided on the basis of written submissions,  
filed April 22, June 10, July 29, August 23, September 30, and October 1, 2024.

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## REASONS FOR DECISION

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### I. Introduction

[1] The grievor, Ron Campbell, filed three individual grievances, concerning a suspension without pay pending an investigation (“the suspension grievance”), harassment allegations from attempts by the Royal Canadian Mounted Police (“the employer”) to require him to participate in interviews related to the disciplinary process (“the interview grievance”), and the termination of his employment (“the termination grievance”). All three grievances arose from alleged misconduct as a result of criminal charges.

[2] The three grievances were referred to adjudication. The employer raised preliminary objections that all three grievances were untimely. The grievor applied for an extension of time to file all three grievances.

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

[4] This decision deals with the employer’s preliminary objections that the interview and termination grievances were untimely and its request that the Board reject the grievor’s application for an extension of time to file both grievances. It withdrew its preliminary objection that the suspension grievance was untimely.

[5] The employer’s objection to the timeliness of the interview grievance is dismissed because the grievance is timely. The grievor’s application for an extension of time to file the termination grievance is allowed.

### II. Summary of the relevant facts

[6] The grievor was a records clerk classified CR-04. He worked for the employer in Milton, Ontario.

[7] On June 5, 2018, the grievor was arrested on criminal charges related to misconduct allegations.

[8] Sometime in late 2019, the employer sent invitations to the grievor, requesting that he participate in interviews with respect to the alleged misconduct and in a review-for-cause interview with respect to his security clearance. On the advice of his criminal counsel, the grievor declined to attend the interviews because criminal proceedings were ongoing.

[9] On December 18, 2019, the grievor filed the interview grievance, alleging that the employer was using the disciplinary process to harass him.

[10] In late 2019, the parties agreed to hold the interview and suspension grievances in abeyance pending the outcome of the criminal process.

[11] On July 22, 2020, the employer terminated the grievor's employment, retroactive to July 6, 2018, the date on which the suspension without pay began.

[12] On May 22, 2023, the grievor was acquitted of the criminal charges.

[13] On January 25, 2024, the bargaining agent filed the termination grievance on the grievor's behalf. It had discovered that a grievance was not filed when his employment was terminated in July 2020.

### III. Summary of the arguments

#### A. For the employer

##### 1. The interview grievance

[14] The employer submits that the interview grievance was filed outside the time limit in the collective agreement between the Treasury Board and the bargaining agent for the Program and Administrative Services group that expired on October 31, 2021 ("the collective agreement").

[15] The relevant part of the collective agreement states as follows:

...

[...]

*18.15 A grievor may present a grievance to the first level of the procedure in the manner prescribed in clause 18.08, not later than the twenty-fifth (25th) day after the date on which the grievor is notified or on*

*18.15 Un employé-e s'estimant lésé peut présenter un grief au premier palier de la procédure de la manière prescrite par la clause 18.08 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est*

*which the grievor first becomes aware of the action or circumstances giving rise to the grievance. The Employer may present a policy grievance in the manner prescribed in clause 18.04 not later than the twenty-fifth (25th) day after the date on which the Employer is notified orally or in writing or on which the Employer first becomes aware of the action or circumstances giving rise to the policy grievance.*

...

*informé ou prend connaissance de l'action ou des circonstances donnant lieu au grief. L'employeur peut présenter un grief de principe de la manière prescrite par la clause 18.04 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est informé de vive voix ou par écrit ou à laquelle il prend connaissance de l'action ou des circonstances donnant lieu au grief de principe.*

[...]

[16] The employer submits that the grievor was provided with a copy of the final investigation report on July 17, 2019. According to the employer, he was subsequently provided with several opportunities to participate in the investigation process, with the last opportunity having been on October 2, 2019. The interview grievance was filed on December 18, 2019, which was 29 days late.

## **2. The termination grievance**

[17] The employer submits that the grievor's employment was terminated on July 22, 2020. The termination grievance was filed on January 25, 2024, which was 3.5 years late.

[18] The employer argues that in May 2023, the grievor's bargaining agent representative indicated that the grievor did not want to be reinstated in his position; he wanted to be made whole, as indicated in the corrective action section of his grievances. According to the employer, this is an indication that the bargaining agent was aware that it had not filed a termination grievance.

## **B. For the grievor**

[19] The grievor made detailed submissions. I focussed on the arguments that are relevant to my decision.

[20] The grievor argues that the Board should dismiss the employer's objections because the interview grievance is timely. He also argues that an arguable case can be made. Alternatively, he argues that I should grant the application to extend the time limit to file both the interview and termination grievances.

**1. The arguable-case test**

[21] The grievor argues that the timeliness objections are being addressed as a pre-hearing matter and that the arguable-test standard applies in pre-hearing matters.

[22] This test requires the Board to accept all allegations as true and capable of proof. The grievor argues that if the alleged facts are true, then the Board must ask whether there is an arguable case that could be advanced in the grievances before any evidence has been called.

[23] The grievor argues that the employer has the burden of satisfying the Board that the arguable-case standard has not been made out and that the grievances ought to be dismissed based on the preliminary objections.

[24] According to the grievor, the Board has held that if there is any doubt as to whether an arguable case has been made out, then it should err on the side of finding that there is an arguable case and preserve his opportunity to have his grievance heard. The grievor pointed me to *Charbonneau v. Treasury Board (Canada Border Services Agency)*, 2022 FPSLREB 1 at para. 25, *Fry v. Parks Canada Agency*, 2021 FPSLREB 88 at para. 34, and *Wepruk v. Treasury Board (Department of Health)*, 2016 PSLREB 55 at para. 65.

**2. The interview grievance**

[25] The grievor argues that the interview grievance is timely because it was filed within 25 days of the date that he first became aware of the action or circumstances that gave rise to it.

[26] He argues that the employer's repeated attempts to require him to participate in interviews that he has declined to attend are continuous and cites *Galarneau v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 1, to support his position.

[27] He also argues that had the employer accepted his decision not to attend the interviews in the first place, then there would be no allegation that its repeated insistence was improper and harassing. According to him, he filed his grievance on December 18, 2019, which was six working days after the interview invitation of December 10, 2019. He argues that it was filed within the time limit.

### 3. Extension of time

[28] Alternatively, the grievor argues that the Board has the authority to extend the time limit set out in the collective agreement for both the interview and termination grievances and cites *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1. It outlines the following criteria:

- clear, cogent, and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the grievor;
- balancing the injustice to the applicant against the prejudice to the respondent if the application is granted; and
- the grievance's chance of success.

[29] The grievor argues that the criteria are not mandatory, are not fixed, and are not of equal weight or importance in every case. He contends that fairness is the overriding goal when determining whether to extend the time limit. Finally, he argues that the chance-of-success criterion is intended to deny a request when the grievance has no chance of success, in the interest of efficiency. According to the grievor, it is not intended to assess the merits of the grievance.

### 4. The interview grievance

#### a. Clear, cogent, and compelling reasons for the delay

[30] The grievor argues that the delay was due to his attempt to address the ongoing interview requests directly with the employer by declining them and advising it that his decision to decline them was made on the advice of his criminal counsel.

[31] He expected the employer to respect his response, and he grieved when it became clear that it was continuing to request interviews with him, despite his information that he would not attend.

#### b. Length of the delay

[32] According to the grievor, the delay is not significant. In 2019, the parties communicated about the employer's request that he attend interviews. This included December 10, 2019, when it made an interview request. He filed his grievance on December 18, 2019.

**c. The grievor's due diligence**

[33] According to the grievor, he was diligent. He filed his grievance six working days after the employer's last invitation to him to attend the interview.

**d. Balancing the injustice to the grievor against the prejudice to the employer from granting the application**

[34] According to the grievor, the employer has not demonstrated any prejudice that it would suffer were the application granted. However, he would be prejudiced were it denied, because he has no recourse to challenge this matter.

**e. The grievance's chance of success**

[35] The grievor argues that the employer's alleged misuse of a disciplinary process to harass and further penalize him gives rise to an arguable case.

**5. The termination grievance****a. Clear, cogent, and compelling reasons for the delay**

[36] The grievor argues that the delay was due to his bargaining agent's error. The bargaining agent understood that clause 18.24 of the collective agreement and s. 71 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*") meant that a grievance was automatically filed on a termination and that it did not have to file one.

[37] Also, the delay filing the grievance was due to the parties' agreement to hold grievances in abeyance until the criminal proceedings finished. According to the grievor, both are clear, cogent, and compelling reasons for the delay.

**b. Length of the delay**

[38] The grievor acknowledges that the delay is not trivial. He argues that the delay is not attributable to his actions because he relied on his bargaining agent's representation. He also argues that the delay was impacted by the parties' agreement to hold the grievances in abeyance until the criminal proceedings concluded in an outcome.

**c. The grievor's due diligence**

[39] The grievor argues that he was diligent. Once the error was discovered, he filed a grievance, without delay.

**d. Balancing the injustice to the grievor against the prejudice to the employer from granting the application**

[40] The grievor argues that the employer has not demonstrated any prejudice that it would suffer were the application granted. He argues that he would experience very serious prejudice were it not granted because his grievance concerns the termination of his employment.

[41] To support his position, the grievor cites *Peacock v. Union of Canadian Correction Officers*, 2005 PSSRB 9 at para. 52.

**e. The grievance's chance of success**

[42] The grievor argues that the grievance demonstrates an arguable case. He was acquitted of charges based on the same allegations that constituted the basis for the termination. In addition, the Court found that his denials of the allegations were credible and accepted them. The grievor argues that this weighs heavily in his favour.

**IV. Reasons****A. The arguable-case framework**

[43] I do not believe that the arguable-case framework is helpful to determining whether the grievances are timely. I will not use the framework in my analysis of this matter. I understand that that framework is used because the burden of proof in certain matters filed under the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) rests with the party alleging that something did not occur. I also understand that the Board has used the framework in the context of analyzing preliminary motions and objections to jurisdiction.

[44] The grievor did not present any case law that indicated that it should be applied to a timeliness objection. He cited cases of complaints under the *Canada Labour Code* (R.S.C., 1985, c. L-2), individual grievances concerning the reclassification of positions, an individual grievance concerning the termination for unsatisfactory performance of an employee of a separate employer, and a case of whether the Board had jurisdiction to decide a grievance concerning personal harassment.



**B. The interview grievance is timely**

[45] The employer argues that the interview grievance was filed outside the time limit. According to it, the grievor was provided several opportunities to participate in the investigation process, with the last opportunity having been on October 2, 2019.

[46] The employer did not dispute the grievor's submission that an additional invitation was made on December 10, 2019, to attend an interview concerning his alleged misconduct. I find that the December 10 invitation is the act or matter that gave rise to the grievance. The grievance was filed on December 18, 2019, which was within the time limit set out in the collective agreement.

[47] In the event that I am incorrect and the grievance is not timely, then I find that the application for an extension of time to file it is granted, in the interest of fairness and for the reasons that follow.

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

[48] The employer argues that the grievor has not demonstrated clear, cogent, and compelling reasons for the delay. I disagree. He attempted to address the ongoing interview requests with the employer directly by declining requests and advising that the decision to decline them was made on the advice of criminal counsel. He expected the employer to respect his decision to decline the requests, and he grieved when it became clear that it was continuing to request interviews on an ongoing basis, despite having been advised of his position. This weighs in his favour.

**2. Length of the delay**

[49] The employer contends that the grievance was filed 29 days late, which is not a significant amount of time. After a review of the Board's jurisprudence with respect to the length of the delay, I note that the Board has granted applications for extensions of time for delays that were much longer. This weighs in the grievor's favour.

**3. The grievor's due diligence**

[50] The grievor demonstrated due diligence. After realizing that his attempts to address the employer's ongoing requests were unsuccessful, he filed his grievance six working days after the last invitation to attend an interview. This weighs in his favour.

**4. Balancing the injustice to the grievor against the prejudice to the employer from granting the application**

[51] The employer has not demonstrated any prejudice that it would suffer were the application granted. The grievor would suffer very serious prejudice were it not granted. This weighs in his favour.

**5. The grievance's chance of success**

[52] The facts of the case have not been presented. It is premature to assess the grievance's chance of success at this point. This factor carries no weight.

**C. The application for an extension of time to file the termination grievance**

[53] The application for an extension of time to file the termination grievance is granted in the interest of fairness and for the reasons that follow. In this case, the fact that the grievance concerns a termination of employment is of considerable significance.

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

[54] The grievor believes that his bargaining agent's incorrect understanding of clause 18.24 of the collective agreement and s. 71 of the *Regulations* and the parties' agreement to hold the grievance in abeyance pending the outcome of the criminal proceedings are clear, cogent, and compelling reasons for the delay.

[55] Clause 18.24 allows a grievance about a demotion or termination for reasons of discipline or unsatisfactory performance, or for reasons other than discipline or misconduct, to be heard at the final level of the grievance process. It does not allow for such grievances to be filed automatically, without the need to submit documentation.

[56] The bargaining agent was formed in 1966. It is one of Canada's largest bargaining agents and is the largest one representing employees of the federal public service. It is experienced in managing grievances. It has represented the interest of its members in countless matters with employers across the federal public service and before the Board. I have difficulty understanding its interpretation of clause 18.24 of the collective agreement and s. 71 of the *Regulations*.

[57] This weighs in the employer's favour.

**2. Length of the delay**

[58] The employer advised the grievor that his employment was terminated on July 22, 2020. He filed a grievance on January 25, 2024, approximately 3.5 years later. The length of the delay is significant. This weighs in the employer's favour.

**3. The grievor's due diligence**

[59] The grievor was diligent. He filed a grievance without delay when he realized that his bargaining agent made an error and did not file a grievance concerning his termination. This weighs in his favour.

**4. Balancing the injustice to the grievor against the prejudice to the employer from granting the application**

[60] The employer has not demonstrated any prejudice that it would suffer were the application granted. The grievor would suffer very serious prejudice were it not granted. Termination of employment is one of the most serious situations in the federal public service. This weighs in his favour.

**5. The grievance's chance of success**

[61] The facts of the case have not been presented. It is premature to assess the grievance's chance of success at this point. This factor carries no weight.

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

*(The Order appears on the next page)*

**V. Order**

[63] The employer's objections are dismissed.

[64] The interview grievance was filed on time.

[65] The application for an extension of time to file the termination grievance is granted.

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

December 10, 2024.

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