Date: 20250319

File: 566-02-14649

Citation: 2025 FPSLREB 27

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

DIANE LEGROS

Grievor

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Legros v. Treasury Board (Canada Border Services Agency)

In the matter of an individual grievance referred to adjudication

Before: Goretti Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Sarah-Claude L'Ecuyer, counsel

For the Employer: Feriel Latrous, counsel

Decided on the basis of written submissions, filed January 29 and February 16, 2018, and August 30 and September 6, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **(FPSLREB TRANSLATION)**

I. Individual grievance referred to adjudication

[1] This decision is about the Canada Border Services Agency's ("the employer") preliminary objection that the grievance, which was referred to adjudication with the Federal Public Sector Labour Relations and Employment Board ("the Board") in Board file no. 566-02-14649, is settled by the principle that it has already been decided (*res judicata*) due to *Legros v. Treasury Board (Canada Border Services Agency)*, 2017 FPSLREB 32 ("*Legros 2017 FPSLREB 32*").

[2] On September 12, 2024, the Board emailed a summary decision in which it informed the parties of the following:

> [Translation]
>
> *The Board considers that the grievance is moot and applies the principle of* res judicata.
>
> *The employer's preliminary objection is allowed. The grievance is denied.*
>
> *Detailed reasons will follow.*

[3] The reasons follow as to why the grievance is denied. Due to the *Legros 2017 FPSLREB 32* decision, the conditions for triggering the application of *res judicata* are met. The Board considers that the circumstances in this case do not justify exercising the discretion to not give effect to that principle.

II. Background

[4] Diane Legros ("the grievor") filed three grievances in succession challenging the employer's conduct when it applied the *Work Force Adjustment Directive* (WFAD). In each grievance, she alleged that it refused to allow her to alternate positions under the WFAD because of her age. The WFAD was incorporated into the applicable collective agreement between the parties, the Treasury Board and the Public Service Alliance of Canada ("the bargaining agent"). All three grievances allege age discrimination. They were filed in the following order:

- the first grievance, dated August 27, 2012, was referred to adjudication on December 12, 2013;
- the second grievance, dated September 4, 2013, was referred to adjudication on April 15, 2014;

· the third grievance, dated April 8, 2014, was referred to adjudication on December 12, 2017;
· the Board heard the first two grievances together on August 3 and 4, 2017, and a decision was issued on October 3, 2017; and
· on January 29, 2018, the employer raised an objection.

[5] For comparison purposes, it is useful to reproduce each grievance's wording.

[6] The first two grievances led to the *Legros 2017 FPSLREB 32* decision.

[7] The first grievance, dated August 27, 2012, reads as follows:

> [Translation]
>
> *I feel aggrieved by my employer's decision to refuse to consider me a volunteer for alternation under Appendix E - Work Force Adjustment and because that constitutes age discrimination under article 19 of the collective agreement and the Canadian Human Rights Act.*
>
> [Requested corrective action]:
>
> *I request to be considered a volunteer for alternation and*
>
> *that the discrimination cease;*
>
> *that I receive compensation for punitive damages (suffering and stress) under the Canadian Human Rights Act and any other corrective measures appropriate in the circumstances.*

[8] The second grievance, dated September 4, 2013, reads as follows:

> [Translation]
>
> *Since April 2012, I have felt aggrieved by* ***my employer's refusal and unwillingness to consider me a volunteer (substitute) for alternation under the App. E- Workforce adjustment*** *and that it constitutes* ***age discrimination*** *under article 19 of the collective agreement and the Canadian Human Rights Act.*
>
> [Requested corrective action]:
>
> *I request to be considered a volunteer for the alternation of my position and*
>
> *- that all the lost opportunities (April 2012 to present) with my management's refusal are considered;*
>
> *- that the discrimination cease;*
>
> *- that I receive compensation for punitive damages under the Canadian Human Rights Act and any other corrective measures appropriate in the circumstances.*
>
> [Emphasis added]

[9] The third grievance, dated April 8, 2014 (and the subject of the objection), reads as follows:

> [Translation]
>
> *Since April 2012, I have been aggrieved by **my employer's refusal and unwillingness to consider me a volunteer (substitute)** and to remove any potential candidate for the alternation of my position under Appendix E-Work Force Adjustment and that **this constitutes age discrimination** under article 19 of the collective agreement and the Canadian Human Rights Act.*
>
> *Requested corrective action*
>
> *I ask to make the alternation of positions a reality, to consider me a true volunteer (substitute) for the alternation and*
>
> *- that all the lost opportunities since April 2012 (there were many EC-05s, PM-05s, and PE-03s interested in my position, and they were all rejected) are considered,*
>
> *- that the discrimination against me cease, and*
>
> *- that I receive compensation for punitive damages under the Canadian Human Rights Act and any other corrective measures appropriate in the circumstances.*
>
> [Emphasis added]

III. Summary of the arguments

[10] The employer submits that the point raised in the third grievance is moot, since it and its requested corrective measure are identical and arose from the same circumstances that led to the two grievances that resulted in the *Legros 2017 FPSLREB 32* decision. It requests that the grievance be denied based on the *res judicata* principle.

[11] For its part, the bargaining agent submits that the facts behind the third grievance were not addressed in *Legros 2017 FPSLREB 32*. It explains that it tried to group the third grievance with the other two, so that they could be heard together, but that the employer opposed it. It adds that at the hearing, the employer objected to the Board considering the evidence related to the third grievance. In addition, the bargaining agent argues that the corrective measures that were granted could have been different had the Board had the third grievance before it because, in its view, it is about another period during which the employer reportedly discriminated against the grievor.

IV. Issue

[12] The objection in this case raises only one question: does the *res judicata* principle prevent adjudicating the grievor's third grievance?

[13] The answer is in the affirmative. I find that the *res judicata* principle applies to the grievor's third grievance.

V. Analysis and decision

[14] It is appropriate to begin by comparing the three grievances' wordings, as set out earlier. They are worded in a strikingly similar way. The question raised is essentially the same, namely, the grievor stated this: "[translation] … my employer's refusal and unwillingness to consider me a volunteer (substitute) … for the alternation of my position under Appendix E- Work Force Adjustment … that constitutes age discrimination …". The requested corrective measures are also the same. The grievor requests that she be considered a volunteer for alternating positions, that the discrimination cease, and that she be paid "[translation] compensation for punitive damages" under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6).

[15] In *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, the Supreme Court of Canada developed the approach to apply the *res judicata* principle. It also applies to administrative tribunals' decisions (see *Boucher v. Stelco Inc.*, 2005 SCC 64 at para. 32). Therefore, it applies to cases before the Board.

[16] The *Danyluk* approach involves a two-step analysis.

[17] The first step is to determine the existence of these three conditions: 1) the same question has been decided, 2) the decision was final, and 3) the parties to the judicial decision or their privies were the same (see *Danyluk*, at para. 25).

[18] When all three conditions are met, the second step is to determine whether, depending on the circumstances of each case, there are reasons to exercise the discretionary power to refuse to apply the *res judicata* principle (see *Danyluk*, at paras. 62 and 63).

[19] In this case, there is no doubt that the conditions described in *Danyluk* have been met.

A. The issue is the same as the one that was decided in *Legros 2017 FPSLREB 32*

[20] On reading each grievance (the two dealt with in *Legros 2017 FPSLREB 32* and the one that is the subject of the objection), it must be stated that they involve the same allegation, namely, age discrimination, because of the employer's refusal to consider the grievor's request to alternate positions under Appendix E - "Work Force Adjustment".

[21] The primary purpose of the three grievances is the WFAD's application. Except for only a few different words, the third grievance's wording merely repeats the allegation in the first two. It does not reveal any new disputed issues. The grievor submits that the third grievance relates to another period during which the employer denied her request to alternate positions. She seeks compensation for alleged damages that would relate to that period.

[22] However, the unspecified damages that the grievor intended to claim at the third grievance's adjudication do not alter the real issue. Similarly, the fact that the Board did not address evidence related to the third grievance when it adjudicated the first two does not create a new question. Rather, it concerns the implicit facts in the main proceedings, which the Board already heard and that led to *Legros 2017 FPSLREB 32*. The three grievances are similar in substance and form.

B. The *Legros 2017 FPSLREB 32* decision is final

[23] The *Legros 2017 FPSLREB 32* decision is final. The bargaining agent submits that the Board has not dealt with the facts that gave rise to the third grievance and that it attempted to consolidate the three grievances, but the employer opposed it.

[24] To reject the employer's objection and demonstrate that there are still issues to decide, the grievor refers to paragraph 41 of *Legros 2017 FPSLREB 32* and argues that the Board acknowledged that it did not address the facts related to the third grievance. Paragraph 41 reads as follows:

> *[41] The grievor testified about facts that gave rise to a third grievance, which is not before me. The employer asked that I give no weight to that evidence, since the facts came after the grievances before me were filed. I give no weight to that evidence in this decision.*

[25] The Board's comments in paragraph 41 do not indicate that it reserved its jurisdiction to rehear the matters raised in the third grievance. Its decision on both grievances dealt definitively with the question that was raised, which is the same in the third grievance.

C. The parties to both cases are the same

[26] There is no doubt that the parties (the grievor and the Treasury Board) are the same in all three grievances and that they have acted in the same way.

[27] On the basis of the preceding, I consider that *Danyluk*'s three conditions have been met. In addition, the principle of *res judicata* may apply even if the facts are different, provided that the three conditions are met. That said, the mere fact that they are met does not necessarily trigger applying the *res judicata* principle. This is where the second *Danyluk* step comes in: reviewing the exercise of discretion.

D. Exercising discretion is not warranted

[28] The second step is to consider whether the particular circumstances of this case justify exercising discretion, to set aside applying the *res judicata* principle.

[29] I do not find it appropriate to not give effect to applying the *res judicata* principle in the circumstances of this case.

[30] The grievor filed three grievances in succession that raised the same issue. The Board dealt with two of them, and a decision was rendered. The issue in the third is essentially the same as the one that was settled definitively, which ended the dispute. Allowing the third grievance to be reheard would reactivate both grievances and would be contrary to the principles of judicial economy, consistency, the finality of proceedings, and the integrity of the administration of justice (see *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 at paras. 33 and 37).

[31] Although the grievor argues that this grievance relates to another period during which the employer continued to undermine the WFAD's application, the substance of the issue remains the same. However, it is not legitimate to initiate a new litigation because of one's new perspectives on the law of a case (see *Apotex Inc. v. Merck & Co. (C.A.)*, 2002 FCA 210 at para. 28).

[32] Similarly, as *Fournier v. Deputy Head (Correctional Service Canada)*, 2011 PSLRB 65 at para. 24, noted correctly, "The objective of the grievance process is the final resolution of disputes. That objective cannot be achieved if a matter is litigated and relitigated, a settled grievance is refiled or a withdrawn grievance is revived."

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

(The Order appears on the next page)

VI. Order

[34] The employer's objection is allowed.

[35] The grievance is denied.

March 19, 2025.

FPSLREB Translation

Goretti Fukamusenge,
a panel of the Federal Public Sector
Labour Relations and Employment Board