Date: 20250327

Files: 566-02-14869, 44894, and 44895

Citation: 2025 FPSLREB 30

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

GUY LAFOND

Grievor

and

DEPUTY HEAD
(Department of Citizenship and Immigration)

Respondent

Indexed as
Lafond v. Deputy Head (Department of Citizenship and Immigration)

In the matter of individual grievances referred to adjudication

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Respondent: Andréanne Laurin and Jean-Charles Gendron, counsel

Heard by videoconference,
June 10 and 11, 2024.
[FPSLREB Translation]

REASONS FOR DECISION **FPSLREB TRANSLATION**

I. Overview

[1] Guy Lafond ("the grievor") filed several grievances against the employer, the Department of Citizenship and Immigration, commonly referred to as Immigration, Refugees and Citizenship Canada (IRCC or "the employer"). Two of them were referred to adjudication, namely, the grievance numbered 502329 ("grievance 1"), and the one numbered 502395 ("grievance 2").

[2] In grievance 1, the grievor challenged the employer's request that he return to work and its refusal to allow him to work from an office outside Ottawa, Ontario. In his opinion, it constituted disguised discipline and discrimination against him, which violated article 41 of his collective agreement. Under the terms and conditions of his interim release, he was prohibited from travelling in Ottawa unless accompanied by a guarantor. 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; "the *Act*").

[3] In grievance 2, the grievor accused the employer of not considering credible the many doctor and psychiatrist letters that confirmed his good physical and mental health and his fitness for work. He referred the grievance to adjudication under s. 209(1)(b) of the *Act*.

[4] When he presented these grievances at the first level of the grievance process in 2017 and 2018 respectively, the grievor held a geographic operations analyst and immigration officer position classified FS-02. His workplace was in Ottawa.

[5] The employer raised objections about the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") to hear these grievances, on the grounds that they were not about discipline and that some were referred to adjudication after the deadline.

[6] Before the hearing started, the employer made a motion that it be held remotely, for safety reasons. The grievor also made several motions, which are detailed later in these reasons. After I heard the parties' arguments on their motions at the start of the hearing, I allowed the employer's motion and rejected the grievor's, with reasons to follow. After that decision, the grievor informed me that he would not attend the hearing on the merits of his grievances. He alleged that I am biased against him.

Despite the registry officer's repeated requests, the grievor refused to attend the hearing. Therefore, he presented no evidence or argument on the merits of his grievances; nor did he respond to the employer's objections to the Board's jurisdiction to hear them.

[7] For the reasons that follow, I deny the grievances for lack of jurisdiction.

II. Background, and procedural history

[8] On August 11, 2017, the director of workforce management informed the grievor that he could return to the office on August 21, 2017, after receiving the independent medical assessment certifying that he was fit to resume work without functional limitations. In response, he informed her that under the conditions of his interim release related to criminal charges that had been laid against him, he was prohibited from travelling alone in Ottawa unless accompanied by a guarantor. So, he asked the employer if he could work somewhere other than at headquarters while waiting for his trial.

[9] On August 25, 2017, the director informed the grievor that his legal status was not the employer's responsibility. She suggested that he contact the Court, to modify the conditions of his interim release. She specified that since he did not show up for work on August 21, 2017, his pay would not be reinstated and that his unauthorized absence could be considered the abandonment of his position.

[10] Related to that, on September 11, 2017, the grievor filed grievance 1. Its wording and the requested corrective measures consisted of four pages. As stated earlier, he contested the employer's request that he return to the office while refusing to let him work at an office outside Ottawa. According to him, it amounted to a disguised suspension (see the response at the third level of the grievance process, for the grievance numbered 502329, of February 14, 2018). And he alleged that the recent actions taken against him were discriminatory and violated article 41 (no discrimination) of his collective agreement. The employer denied that grievance.

[11] The bargaining agent representing the grievor referred grievance 1 to adjudication on February 28, 2018, under ss. 209(1)(a) and (b) of the *Act*, which read as follows:

> ***209 (1)*** *An employee who is not a* member *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> ***(a)*** *the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;*
>
> ***(b)*** *a disciplinary action resulting in termination, demotion, suspension or financial penalty ….*

[12] The Board assigned file no. 566-02-14868 to the referral under s. 209(1)(a) of the *Act*, and file no. 566-02-14869 to the referral under s. 209(1)(b).

[13] On May 16, 2022, the bargaining agent informed the Board that it would no longer represent the grievor. Considering that a grievor cannot refer their grievance to adjudication under s. 209(1)(a) of the *Act* without their bargaining agent's approval (see s. 209(2)), Board file no. 566-02-14868 was closed. Nevertheless, the grievor was able to proceed with the referral in Board file no. 566-02-14869.

[14] About two weeks after the bargaining agent informed the Board that it would no longer represent the grievor, on June 2, 2022, he referred two grievances to adjudication under s. 209(1)(b) of the *Act*. The referrals did not clearly identify the grievances that were involved. Only in his May 15, 2024, email did he confirm that those referrals were for grievance 1 (the grievance numbered 502329) and grievance 2 (the grievance numbered 502395). It is worth noting that that was the second time that he referred grievance 1 to adjudication. The Board assigned file numbers 566-02-44894 and 566-02-44895 to those referrals to adjudication.

[15] The wording of grievance 2 refers to the May 7, 2018, letter that the grievor signed and that was addressed to Mark Giralt, the director general of the IRCC's International Network. In it, the grievor denounced the fact that the employer did not "[translation] want to consider credible the many doctor and psychiatrist letters that clearly reported [his] good physical and mental health and therefore [his] fitness to work". The employer denied the grievance at the third level on November 20, 2018.

[16] On June 13, 2022, the grievor applied for an extension of time for the referrals of the grievances to adjudication in Board file nos. 566-02-44894 and 566-02-44895.

The employer objected. The objection was to be resolved during the hearing originally scheduled for September 11 to 13, 2023.

A. The hearing scheduled for September 11 to 13, 2023, was postponed

[17] On August 30, 2023, the Board allowed the request to postpone the hearing that the employer submitted because its counsel was unavailable. The employer proposed postponing the hearing to October 23, 2023. Instead of informing the Board as to whether he was available to proceed during the week of October 23, 2023, as it requested, the grievor applied for the judicial review of the Board's decision to postpone the hearing. The Court dismissed the application on November 21, 2023, on the grounds that it was premature (see *Lafond v. Canada (Immigration, Refugees and Citizenship)*, 2023 FCA 227).

B. New dates, and preparing for the hearing

[18] On January 10, 2024, the Board informed the parties that the hearing was scheduled for June 10 to 14, 2024, in person, and that the dates were deemed final.

[19] The next day, the grievor acknowledged that he had received the email and requested that the hearing take place by videoconference, as he lived in Montréal, Quebec. To accommodate him, the Board ordered the hearing held in Montréal, in person, on the same dates.

[20] On May 6, 2024, in preparation for the hearing, the grievor requested that the Board issue summonses for these four people:

1) his ex-wife, to explain why she demanded that he pay her a food allowance for their daughter;
2) Anne Clark-McMunagle, who was then working for the bargaining agent of which the grievor was a member, to testify that she made an adjudication request for him on March 9, 2018;
3) Bertrand Myre, who was then working for the grievor's bargaining agent, to testify to his decisions to represent the grievor for several months and then to withdraw that support; and
4) Olivier Jacques, to testify as to why he denied the grievor's request to be transferred to the IRCC office in Montréal in 2017 and to explain why he decided to rescind the discipline that his predecessor had imposed on the grievor.

[21] I denied the requests. In my May 21, 2024, directive, I informed the grievor that he had not established that it was likely that the testimonies of his ex-wife, Ms. Clark-McMunagle, and Mr. Myre would be relevant to his grievances (see *Agnaou v. Canada*

(Public Prosecution Service), 2022 FCA 140 at para. 81; and *Zündel, Re*, 2004 FC 798 at paras. 7 to 10).

[22] Specifically, the grievor did not demonstrate how his ex-wife's testimony about the payment of the allowance in question could be relevant to his grievances. Similarly, as for the proposed testimonies of Ms. Clark-McMunagle and Mr. Myre, the grievor did not establish, which was up to him, how they could be relevant to the examination of his grievances. It is undisputed that Ms. Clark-McMunagle referred the grievance to adjudication within the prescribed time limit (according to the Board's file, she referred it on February 28, 2018, rather than on March 9, 2018, as the grievor suggested). And the fact that the bargaining agent withdrew its support for him is not relevant to the issues raised in the grievances.

[23] As for Mr. Jacques' evidence, it could indeed have been relevant to the issues raised in the grievances that were referred to adjudication. However, considering that the employer had confirmed in writing its intention to call Mr. Jacques as a witness, I informed the grievor that it was not necessary to issue a summons to compel him to testify.

[24] On May 22, 2024, the grievor made a motion in writing that the Board reconsider its decision to refuse to issue summonses for his ex-wife, Ms. Clark-McMunagle, and Mr. Myre. On May 23, 2024, I rejected his motion on the same grounds as those stated in my May 21, 2024, directive.

[25] At the pre-hearing conference on May 22, 2024, I explained to the grievor that he had the burden of establishing that the employer's actions challenged in his grievances were disguised discipline; otherwise, I could not hear them (see *Lindsay v. Canada (Attorney General)*, 2010 FC 389 at paras. 46 and 48; *Wong v. Deputy Head (Canadian Security Intelligence Service)*, 2010 PSLRB 18 at paras. 34 and 35; and *Bergey v. Canada (Attorney General)*, 2017 FCA 30 at para. 37). He asked to present his evidence first, which I accepted. The conference minutes were communicated to the parties on May 23, 2024.

[26] On May 25, 2024, the grievor made a motion that his grievances be heard by a panel of three Board members. According to him, my lack of neutrality, due to my refusal to issue the summonses for his ex-wife, Ms. Clark-McMunagle, and Mr. Myre, constituted the basis of his motion. On May 28, 2024, I informed him that normally, a

single Board member hears a referral to adjudication. That said, I informed him that he could make a motion for my recusal if he believed that I was biased against him and that I lacked neutrality. He made that motion on the first hearing day.

C. The employer made its motion for a virtual hearing, for safety reasons

[27] On June 6, 2024, the employer made its motion that the hearing be converted to a virtual one, for safety reasons. It submitted a summary of the factors supporting its motion, and the grievor was copied. On the same day, I informed the parties that I would hear the employer's motion urgently, on June 7, 2024, at 10:00 a.m. On the same day, the grievor proposed that the motion be debated on the first hearing day, which was June 10, 2024, as he was not available on June 7.

[28] Based on the foregoing, the Board's registry informed the parties that the employer's motion would be heard remotely on Monday, June 10, 2024, at 9:30 a.m., which was the first hearing day.

III. The first hearing day

A. The grievor made his motion to postpone the hearing

[29] About an hour before the hearing started, the grievor made his motion in writing that the Board postpone it until Wednesday, June 12, 2024, at 9:30 a.m. In support, he argued as follows:

> 1) he had sent a formal request to the employer's counsel and expected them to respond by Wednesday, June 12, at 9:30 a.m.;
> 2) I refused to issue summonses to the three people identified earlier;
> 3) the postponement would give the Board time to reply to his motion for a panel of three Board members to hear his grievances, due to my lack of neutrality and the files' complexity;
> 4) problems arose with the portal to submit his documents; and
> 5) the Canadian Human Rights Commission (CHRC) did not respond to his request to send a representative so that he "[translation] … could make the most of his expertise in the ongoing adjudication process …".

[30] The employer objected in writing to the motion. In summary, it highlighted that if the grievor did not appear, it would argue that he had abandoned his grievances, considering that he had the burden of demonstrating disguised discipline and that the hearing date had been known for several months.

[31] The hearing started on June 10, 2024, at 9:30 a.m., as scheduled. I informed the parties that before hearing the grievor's evidence, I would first hear the employer's

motion to convert the hearing into a virtual one, and that next, I would hear the grievor's motions, if there were any.

B. The employer's motion to proceed virtually

[32] The employer cited safety considerations for all the intervenors called to appear in person at the hearing. To support its motion, it referred to the factors mentioned in its June 6, 2024, email, which had been drawn mainly from the judgments of the Ontario Courts of Justice and two documents submitted to support its motion.

[33] Specifically, the employer referred to *van de Hoef v. Lafond*, 2015 ONCS 6554 ("*Lafond*"), which set out the grievor's problematic behaviour, both inside and outside the courtroom, which involved several intervenors. Here is an excerpt:

> [Translation]
>
> …
>
> *[4] The father's inability to deal with anyone who does not share his point of view was, before and during the trial, an important issue… During the proceedings, the father's behaviour was unacceptable at times, particularly when he made a paper airplane with the document that the mother's counsel had given him. He alleged that the mother and her counsel were psychologically harassing him. Moreover, he has or has had issues with almost everyone called to intervene in this matter whose viewpoints differ from his. By stoking the conflict and adopting behaviour that was often troubling and threatening, the father demonstrated that he was neither willing nor able to think of his child's needs before his own.*
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> …
>
> *[22] In December 2014, the father was expelled from the Gloucester Centre and the security staff banned him after an incident at the office of the mother's counsel, located in the same Gloucester Centre. Also in December 2014, the father's behaviour led Ottawa Police Service officers to doubt his ability to take care of a child after an incident at a police station in which the father was told that the complaint that he wished to make against the mother was ineligible, due to its civil nature.…*
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> …
>
> *[27] … The father has shown that he is rarely in a position to accept the opinions of people who do not share his point of view. He admitted that he tends to raise his voice when he deals with others, who often interpret his impatience as aggression… In his testimony, he admitted to losing patience with others, and he indicated that he would continue to behave that way if things did not change in his favour.*

…

[33] …

a) … The father's disputes with school personnel, doctors, the former dentist, the babysitter, the babysitter's husband, the mother's former landlord, and the Ottawa Police Service officers all testify to his inability to maintain appropriate relationships with people who do not share his opinions.

…

e) The evidence in this case leads me to conclude that there is reason to be concerned about the father's propensity to resort to physical violence or to exhibit threatening behaviour. In addition to the confrontation with a neighbour in 2006, the father admitted to feeling good after colliding with the babysitter's husband, Marc-André Pigeon, who was on a bicycle. Emails submitted as evidence recount the father's threat to the effect that "unfortunate events" would result if those who opposed him continued to be obstinate. Finally, a number of incidents, including the father following Mr. Gagnon home, standing in front of Ms. Gignac's house for an extended period, parking his vehicle in front of the Gignac's house, and showing up at certain public places where the mother could have been, greatly concern the Court with respect to the extent to which he wishes to intimidate people.

…

[36] … The father's behaviour during the trial, both inside and outside the courtroom, raises many questions about his mental health, and to this day, those issues remain unresolved.…

…

[45] … During these proceedings, he also made some alarming comments, such as "it's not surprising that unfortunate incidents occur" (exhibit "K").…

…

[34] In *Van de Hoef v. Lafond*, 2018 ONSC 4440, the judge also mentioned the grievor's threatening and hostile behaviour toward those around him. It is not necessary to repeat it, as it is already included in the public decision, which is accessible to anyone who is interested. However, it seems relevant to me to reproduce the following excerpts, as they described the grievor's behaviour during the trial:

…

[59] … When prompted to focus on his daughter's well-being and how continued access between them would be in her best interest, his discourse was at times belligerent, confusing, and completely incongruous. As an example of the father's strange behaviour in court, I note his request that the court ignore the fact that he was

> *criminally charged with various offences since the police is* [*sic*] *unworthy of belief, as evidenced by the fact that the* [*sic*] *Montréal's police chief is currently being investigated for potential wrongful actions.*
>
> …
>
> *[62] According to a psychological report prepared by Dr. François Beaudoin on November 20, 2014, and which formed part of the Trial Record before Justice Labrosse, it was found that the father was always on the edge of exploding, and that he suffered from a personality disorder causing unusual, bizarre and harassing behaviour to those around him.…*
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> …

[35] In *R. v. Lafond*, 2019 ONCJ 572, which was a trial for the grievor's disobedience of a Superior Court of Justice order, the judge also noted the grievor's intimidating, aggressive, and hostile behaviour toward those around him.

[36] In addition to the behaviour already mentioned, the employer also referred me to the termination letter dated April 26, 2018, which it submitted to support its motion, to the effect that the grievor reportedly made threatening remarks to his supervisor. Specifically, according to the relevant passage in the letter, he allegedly made the following remarks: "[Translation] Why are you waiting to kick me out? Do it quickly; otherwise, the situation will get worse. Some people are going to pay. Pay attention!"

[37] The employer also referred me to the grievor's email exchange with his bargaining agent representative, dated March 6, 2018, which was also submitted to support its motion. In the email, the representative told the grievor not to show up at the bargaining agent's office, due to threatening remarks that he allegedly made. The relevant excerpt reads as follows:

> [Translation]
>
> *… Also, during our meeting, you told me that "the day would come when I would be afraid to leave the house", which I took as a threat. We also ask that you no longer come to our office and that you communicate with us only by email.…*

[38] In response, the grievor stated that he disagreed with that statement. He argued that the motion was late and that the counsel initially assigned to the case did not raise any concerns.

[39] Specifically, the grievor argued that the employer was referring to the Ontario Courts of Justice decisions, to demonstrate that he is unpredictable and dangerous to people. In 2012, his ex-wife, with their daughter, left him. The Courts' judgments were not favourable to him. In addition, he has faced discipline from the employer for years. He has suffered a significant amount of stress. The criminal court judge sentenced him very harshly, according to him.

[40] As for the employer's allegation that the grievor behaved inappropriately to his ex-wife's counsel, he explained his behaviour by stating that he did not trust that lawyer. He made a complaint against that lawyer with the Law Society of Ontario, but it was dismissed. He denied the facts described in the Ontario Courts' judgements that the employer referenced, and he disagreed with the judges' findings.

[41] The grievor admitted that he collided with the person identified in *Lafond*, at para. 33(e), while that person was on a bicycle but that it their fault, not his. Since the *Lafond* judgment, nothing serious has happened. He added that he is of sound mind and that if people are afraid of him, they should seek help.

[42] When I asked the grievor to specify the hardship that he would suffer if I decided to grant the employer's motion and continue the hearing virtually, he was unable to provide me with one.

[43] After I heard the parties' arguments on the employer's motion, I invited the grievor to make his motions, if he had any. He filed three.

C. The grievor's motions

1. The postponement motion

[44] In his oral arguments, the grievor essentially reiterated the reasons supporting his postponement motion, which he presented in writing earlier that same morning of the hearing, as detailed earlier. There is no need to repeat them. However, he also added an additional reason, in support. Specifically, he argued that since the witnesses whom I had refused to issue summonses for had been supposed to testify for two days, namely, the Monday and Tuesday, it justified postponing the hearing until Wednesday, June 12, 2024.

[45] The grievor confirmed receiving the employer's documents on Saturday, June 8, 2024. He reviewed them quickly and admitted that they were "[translation] pretty

much the same" as those that he submitted to the Board and that he wanted to use as evidence. He was familiar with their contents.

2. The motion that a three-member panel hear the grievances

[46] The grievor reiterated his motion for a three-member panel to hear his grievances. He justified it by citing his files' increasing complexity and alleged my loss of neutrality and bias toward him on the grounds that I refused to issue the summonses.

3. The recusal motion

[47] Finally, the grievor once again made a motion that I recuse myself due to my lack of impartiality and neutrality. He supported his argument, once again, by the fact that I refused to issue the summonses.

4. The employer's response

[48] The employer objected to the grievor's motions. It argued that the hearing date was communicated to the parties in January 2024. The refusal to issue the three summonses was communicated to him on May 21, 2024. Nothing changed after that. It argued that postponing the hearing could compromise part of the work already completed preparing for the hearing scheduled for June 14, 2024. Indeed, were the hearing postponed to Wednesday, June 12, 2024, and considering that the grievor's evidence was to last about two days, the employer would have had only one day to present its evidence. Its witnesses were ready to testify, including two who would have to do it from abroad. And two of its witnesses had retired. They dedicated time to prepare for the hearing and adjusted their schedules to be able to testify. Both the employer and the Board had dedicated significant resources to the hearing.

[49] The employer recalled that in fact, in January 2024, the grievor requested that the hearing be held virtually. And he was not able to explain the prejudice that he would suffer if the hearing proceeded virtually.

[50] The employer argued that nothing in this case justified convening a panel of three Board members to hear the grievor's grievances. They do not involve issues of public interest and do not raise questions of notable complexity. His motion was just a delay tactic.

[51] As for the parties' exchange of documents, the grievor confirmed that he received the document binders that the employer wished to use as evidence and acknowledged reviewing them, and he specified that he was familiar with their contents.

[52] The employer requested that the Board dismiss the grievor's motions and order that the hearing continue virtually.

[53] I adjourned the hearing for about half an hour, to study the parties' motions.

IV. Analysis, and interlocutory decisions

A. The employer's motion for a virtual hearing was well founded

[54] I carefully reviewed the employer's request to support its motion to hold the hearing virtually. Its concerns were valid about the safety of the participants who had to appear in person at the hearing. They were based on the threatening, harassing, and sometimes violent behaviour attributed to the grievor, as documented in the Ontario Courts of Justice decision and in the two documents submitted as part of the motion.

[55] Although the noted incidents dated back several years, I believed that their age was not enough to dismiss the employer's concerns. The grievor's past behaviour, as described, suggests a propensity for instability and intimidation, which could resurface in a stressful context, such as an in-person hearing.

[56] The relevance of the incidents reported in the Ontario Courts of Justice decisions and the other evidence was still there, as they demonstrated behavioural trends of concern. Such trends do not dissipate automatically with the mere passage of time.

[57] Although the grievor asserted that "[translation] nothing serious" happened since the cited incidents, it did not constitute evidence that the risk of intimidating or aggressive behaviour did not exist. He presented no concrete evidence of efforts he made to address the concerns (for example, therapy, anger management, or something else).

[58] The grievor's tendency to downplay the problematic behaviour described earlier and his refusal to acknowledge it as such heightened concerns that it would possibly recur in a stressful setting, such as an in-person hearing.

[59] Certainly, I would have preferred that the employer made its motion well before the hearing date. It stated that its motion was made late due to the change of counsel a few weeks before the hearing. About three weeks before it, the new counsel took steps with the Department of Justice with respect to concerns about participant safety at the hearing. However, shortly before the hearing, counsel was informed that he had to submit an official application to the Board about that issue.

[60] That said, the motion being made late did not diminish the seriousness of the security concerns or the need to implement the necessary measures to ensure participant safety at the hearing.

[61] In my decision, I also took into account the fact that the grievor was unable to demonstrate the concrete prejudice that he would suffer were the hearing held virtually.

[62] For those reasons, considering that there is nothing inherently unfair about holding a virtual hearing (see *Sanayhie v. Durham Regional Police Services Board*, 2025 ONSC 287), and to ensure the proceeding's proper conduct while preserving all participants' safety, I allowed the employer's motion and ordered that the hearing continue virtually.

[63] At the same time, I rejected the grievor's motions, with reasons to follow. These are the reasons.

B. There was no valid reason to grant the postponement

[64] The grievor's motion to postpone the hearing was not supported by valid reasons to justify it, as it should have been, according to the Board's *Labour Relations Procedural Guide*.

[65] The grievor's argument is difficult to understand; it was that a postponement was justified because the witnesses whom he wanted to have summonses issued for would have testified for two days. My decision to refuse to issue the summonses was communicated to him on May 21, 2024. It was nothing new or unexpected that would have caught him by surprise on the hearing day. He knew for weeks that the people whom he wanted to have summonses issued for would not actually testify.

[66] The fact that the grievor made a formal request of the employer's counsel and expected them to respond by Wednesday, June 12, at 9:30 a.m. was not a reason to postpone the hearing. And despite that request, the employer's counsel was ready to proceed. The grievor did not make any argument demonstrating how the request could have impacted the hearing's start or conduct.

[67] The grievor did not establish how the alleged technical difficulties with accessing the Board's electronic document-sharing portal would justify postponing the hearing. First, he confirmed that he received the employer's document binders on June 8, 2024. When I asked him if he had the time to review them, he stated that the binders contained essentially the same documents that he submitted to the Board and that he planned to use to present his evidence. He confirmed that he was aware of the contents of the documents that the employer sent.

[68] The fact that the CHRC did not specify whether it intended to make submissions on the grievor's issue raised in the notice to it ("the Notice") under s. 92(1) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*") and dated May 25, 2024, had no impact on the start or the conduct of the hearing. Specifically, he complained in the Notice that the Board refused to issues summonses for the three witnesses and that the employer refused to take his family status into account. As a corrective measure, in the Notice, he requested that the Board approve his motion to issue summonses for the three witnesses in question.

[69] Connected to the information just set out, the record reveals that in February 2018, the bargaining agent already submitted a notice to the CHRC about grievance 1. The CHRC expressed no intention to make submissions about the issue that was raised, as it could have done under s. 210(2) of the *Act* and s. 93(1) of the *Regulations*. Once again, the grievor could not explain how the fact that the CHRC did not specify whether it intended to make submissions on the issue raised in the May 25, 2024, Notice would have prejudiced him. Finally, and for information purposes, I note that the CHRC expressed no intention to make submissions in this case related to the May 25, 2024, Notice.

[70] Finally, the grievor made his motion that the hearing be postponed, to allow the Board to ask the employer for its opinion on his motion to replace me with a panel of three Board members to hear his grievances. However, its counsel responded that

nothing in this case justified such a panel to hear the grievances. They do not involve issues of public interest and do not raise questions of notable complexity, as will be explained in more detail in the following section of these reasons.

[71] For all those reasons, my opinion was that the grievor's reasons were not valid enough to justify a postponement. Indeed, according to the Board's *Labour Relations Procedural Guide*, which is available on its website, postponement requests must be supported by valid reasons.

[72] In addition to the reasons set out earlier, in my decision to reject the postponement motion, I also took into account the public interest in favour of the efficient administration of justice, which avoids undue delays and promotes the final resolutions of conflicts. Indeed, postponing the hearing until Wednesday, June 12, would likely have required additional dates to complete it, which thus would have expended resources and increased costs unnecessarily.

[73] My opinion is that in the circumstances of this case, granting a postponement in the absence of valid reasons would have been contrary to the public interest in favour of the efficient administration of justice and that it would have undermined the effectiveness of the decision-making process (see *Fletcher v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 39 at para. 36; and *Lambert v. Health Canada*, 2013 PSDPT 1 at para. 93).

C. A three-member panel was not required

[74] The grievor's second motion was about his request to direct that his grievances be heard by a panel of three Board members. He supported his motion by alleging that I lost neutrality toward him, as well as his files' increasing complexity.

[75] Besides generally alleging that his files' complexity had changed, the grievor was unable to specify how they had become more complex. I agree with the employer that the grievances do not raise issues of notable complexity or public interest that would have justified a panel of three Board members.

[76] Indeed, the grievor's grievances raise relatively simple questions as to whether the challenged measures constituted disguised discipline and, if so, whether they were justified. Such issues are raised frequently before the Board and are decided by a Board member sitting alone. Additionally, the Board's limited resources, the principle

of judicial economy, and the absence of exceptional circumstances did not justify appointing three Board members to hear the grievances.

D. The recusal motion was not well founded

[77] Finally, the grievor made his motion that I recuse myself. He argued that my refusal to issue summonses for the three people demonstrated bias and a lack of neutrality toward him.

[78] In *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369, the Supreme Court of Canada formulated the test for a reasonable apprehension of bias as follows:

> …
>
> *… the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information… that test is "what would an informed person, viewing the matter realistically and practically … conclude. Would he think that it is more likely than not that* [the decision maker]*, whether consciously or unconsciously, would not decide fairly."*
>
> …

[79] As I have already explained, after I analyzed the proposed scope of the testimonies from those affected by the summons request, I determined that the grievor did not establish that it was likely that the testimonies of his ex-wife, Ms. Clark-McMunagle, and Mr. Myre would be relevant to his grievances (see *Agnaou* and *Zündel*). Indeed, he did not demonstrate that as was his burden, it was likely that the matter of his ex-wife paying the food allowance, Ms. Clark-McMunagle's grievance submission — which is not in dispute, or the matter of the bargaining agent's withdrawal of representation were relevant to the issues raised in his grievances. That is why I refused to issue summonses for those three people.

[80] As for Mr. Jacques' evidence, my opinion was that his evidence could in fact have been relevant to the issues raised in the grievor's grievances. However, I informed the grievor that it was not necessary to issue a summons for Mr. Jacques, considering that the employer had confirmed in writing its intention to call him as a witness.

[81] I believe that a sensible, reasonable, and well-informed person, who would examine the reasons for my decision to refuse to issue the summonses in a realistic

and practical manner would conclude that there was no reasonable apprehension of bias against the grievor.

V. The grievor refused to appear for the hearing's resumption

[82] After the ruling on the parties' motions, the grievor informed me that he would not attend the hearing's resumption at 1:00 p.m., after lunch, because I was "[translation] clearly" biased against him. His arguments were based on my decision to allow the employer's motion and to reject his motions. In response to that statement, and before adjourning the hearing for lunch, I reminded him of the importance of his presence at the hearing, particularly because he had the burden of proof in this case. Additionally, I indicated that when the hearing resumed at 1:00 p.m., I would first hear the employer's objections to the Board's jurisdiction to hear the grievances. After that, the grievor could respond and submit his evidence. He reiterated that he would not attend when the hearing resumed.

[83] The grievor did not attend when the hearing resumed. Faced with that, the employer informed me that it wished to make a motion to deny the grievances for abandonment reasons, in addition to its motion to deny it due to the Board's lack of jurisdiction to deal with it. Before hearing from the employer, I asked the Board's registry to try to contact the grievor, to explain once again the potential consequences of refusing to attend the hearing that was dealing with his grievances.

[84] To that end, the registry first emailed the grievor at 1:19 p.m., inviting him to attend the hearing and emphasizing the potential consequences of his refusal to participate. That was followed by a phone call at 1:23 p.m., which he allowed to go unanswered. In a final effort to convince him to attend the hearing, I asked the registry to email him again, which was done at 2:28 p.m. The relevant excerpt of the email reads as follows:

> [Translation]
>
> …
>
> *To give the grievor time to consider his desire to continue his referrals to adjudication and the potential consequences if he does not participate, namely, his grievances being denied for lack of jurisdiction or abandonment, the Member decided to adjourn the hearing to* ***Tuesday, June 11, 2024, at 9:30 a.m.*** *On that date, the Board will deal with the employer's preliminary objections and any*

> *other motions that it may make in response to the grievor's absence from the hearing.*

[85] In a June 10, 2024, letter, the grievor acknowledged receiving the emails. He informed the registry that he would not attend the hearing resumption scheduled for Tuesday, June 11, 2024, at 9:30 a.m., because I had "[translation] rejected all his legitimate requests" that he had submitted and that he would take steps with the Federal Court of Appeal to challenge my decisions. He made an application for the judicial review of my decisions before the Federal Court in its file no. T-1728-24.

[86] On June 11, 2024, at 9:30 a.m., the employer presented its preliminary objections to the Board's jurisdiction to hear the grievances, as well as a motion to deny them, for abandonment.

VI. Analysis and decision, addressing each grievance

[87] The employer opposed the Board's jurisdiction to hear the grievances on the grounds that the measures being challenged were not discipline but rather administrative actions. In addition, it argued that the Board did not have jurisdiction to hear grievance 1 and grievance 2, referred to adjudication on June 2, 2022, because they were referred late.

A. The Board does not have jurisdiction to deal with grievance 1, which the bargaining agent referred to adjudication on February 28, 2018

[88] The bargaining agent referred grievance 1 to adjudication under ss. 209(1)(a) and (b) of the *Act* before it refused to continue representing the grievor. However, for the reasons that I explained earlier, the referral to adjudication under s. 209(1)(a), about the discrimination allegation caused by contravening article 41 of the collective agreement, was closed. On the other hand, the referral under s. 209(1)(b), the wording of which is as follows, continued despite the bargaining agent withdrawing its representation:

> ***209 (1)*** *An employee who is not a* member *as defined in subsection 2(1) of the* Royal Canadian Mounted Police Act *may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> …

> ***(b)*** *a disciplinary action resulting in termination, demotion, suspension or financial penalty ….*

[89] The employer argued that the Board did not have the jurisdiction to hear this grievance, referred under s. 209(1)(b), because it does not involve discipline. Specifically, it argued that its decision to require the grievor to report for work on Monday, August 21, 2017, in Ottawa, without allowing him to work from an office located outside Ottawa, was administrative and therefore could not be referred to adjudication under s. 209(1)(b) of the *Act*.

[90] On reading the grievance, I noted that the grievor does not allege even once that he was subjected to discipline that resulted in termination, a demotion, a suspension, or a financial penalty. I understand that the restriction on travelling alone in Ottawa that was imposed on him initially prevented him from resuming his duties and receiving a salary. I said initially because on October 13, 2017, the Court amended that restriction to allow him to work from his headquarters office. The fact that he was unable to return to work on August 21, 2017, because of that restriction does not automatically mean that he was subjected to disguised discipline.

[91] It was up to the grievor to convince me that the employer's refusal to accommodate him by allowing him to work from an office outside headquarters was disguised discipline aimed at punishing him. So, with full knowledge of the situation, he chose not to. Indeed, I note that during the third-level grievance presentation, the bargaining agent's representative clarified that the employer's refusal to accommodate the grievor's restrictions on travelling alone in Ottawa constituted a disguised suspension (see the third-level response to the grievance numbered 502329 of February 14, 2018). At that time, his bargaining agent represented the grievor.

[92] The grievor had the burden of establishing that that refusal constituted disguised discipline (that is, a disguised suspension) (see *Lindsay*, at paras. 46 and 48; *Wong*, at paras. 34 and 35; and *Bergey*, at para. 37). However, he did not discharge that burden. In short, he provided no evidence to establish that he was subjected to disguised discipline and to rebut the employer's objection that the Board does not have jurisdiction to hear this grievance.

[93] The decision to order an employee to return to work or to deny a relocation request is not normally considered disciplinary. They are normally deemed administrative actions taken in accordance with the employer's management rights.

[94] In fact, on reading the wording of the grievance dated September 11, 2017, and the third-level response dated February 14, 2018, it appears that the employer requested that the grievor to return to work because, according to the independent medical assessment, he was fit to resume his duties, without limitations. Nothing in that factual framework suggests that that action was punitive.

[95] Furthermore, not allowing an employee — who, as the employer argued in its submissions, has performance and behaviour difficulties — to work anywhere other than their usual workplace does not demonstrate a punitive intent. It is legitimate for management to closely supervise employees who are having difficulty, to guide them, foster their improvement, and ensure that the team and the organization function smoothly. Once again, on the face of it and in the absence of evidence to the contrary, it was an administrative action.

[96] In light of that, I accept the employer's arguments that its request that the grievor to return to work, without allowing him to work from an office located outside Ottawa, was not intended to punish or discipline him in any way.

[97] Therefore, considering that this grievance involves an administrative action rather than discipline, I allow the employer's objection and deny it, for lack of jurisdiction to deal with it.

B. The Board does not have jurisdiction to hear grievances 1 and 2, which the grievor referred to adjudication on June 2, 2022

[98] As for grievances 1 and 2, which the grievor referred to adjudication on June 2, 2022, while he no longer had his bargaining agent's support, the employer argued that the Board did not have the jurisdiction to hear them, for two reasons. First, they are not about discipline, and second, his referral to adjudication was untimely.

[99] As already explained, grievance 1 was referred to adjudication twice, first by the grievor's bargaining agent in 2018, and second by the grievor in 2022. In the last section, I already concluded that the Board does not have jurisdiction to hear grievance 1, as it does not involve discipline. And for the reasons outlined later in this

decision, I have determined that grievance 1, referred to adjudication for a second time on June 2, 2022, was submitted late, just like grievance 2.

[100] The grievor referred these grievances to adjudication on June 2, 2022. However, for grievance 1, the employer made its third-level decision on February 14, 2018. As for grievance 2, it issued a third-level response on November 20, 2018. It follows that as the employer points out, the grievor far exceeded the 40-day deadline set out in s. 90(1) of the *Regulations* to refer the grievances to adjudication, which reads as follows:

> ***90 (1)*** *Subject to subsection (2), a grievance may be referred to adjudication no later than 40 days after the day on which the person who presented the grievance received a decision at the final level of the applicable grievance process.*

[101] Under s. 61(b) of the *Regulations*, in the interest of fairness, the Board can extend the deadline set out in Part 2 of the *Regulations* or in a grievance process in a collective agreement to refer a grievance to adjudication.

[102] The Board uses a five-step test to determine whether it should use its discretionary power to extend deadlines out of concern for fairness. They are as follows: clear, cogent, and compelling reasons for the delay; the length of the delay; the grievor's due diligence; balancing the injustice to the grievor against the prejudice to the employer in granting an extension; and the grievance's chances of success (see *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1 at para. 75).

[103] In his extension-of-time application dated June 13, 2022, the grievor did not provide any clear, cogent, or compelling reason to justify why he waited several years before referring these grievances to adjudication. And he did not address the other steps of the *Schenkman* test. His application merely reproduced s. 61 of the *Regulations*. However, his responsibility was to satisfy the Board that extending the deadline was justified, out of a concern for fairness. He did not.

[104] Therefore, I dismiss the grievor's extension-of-time application, allow the employer's objection, and deny the grievances for lack of jurisdiction.

[105] The employer also made its motion that the Board deny the grievances on the grounds that they are not about discipline and that consequently, it does not have the jurisdiction to hear them. As indicated in the last section, I have already denied grievance 1 for that reason.

[106] As for grievance 2, since I concluded that the Board does not have jurisdiction to deal with it since its referral to adjudication was untimely, it is not necessary to decide whether it should also be denied on the grounds that it is not about discipline.

C. The motion to deny the grievances, for abandonment

[107] Finally, the employer made a motion that I deny the grievances, on the grounds that the grievor abandoned them.

[108] Due to my decision to deny the grievances for lack of jurisdiction, it is not necessary for me to rule on the motion to deny them, for abandonment.

(The Order appears on the next page)

VII. Order

[109] I allow the employer's objections.

[110] I deny the grievances, for lack of jurisdiction.

March 27, 2025.

FPSLREB Translation

Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board