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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

FRANTZ-GREGORY GRACIA

Applicant

and

DEPUTY HEAD
(Correctional Service of Canada)

Respondent

Indexed as
Gracia v. Deputy Head (Correctional Service of Canada)

In the matter of an application for an extension of time referred to in section 61(b) of the *Federal Public Sector Labour Relations Regulations*

Before: Audrey Lizotte, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Dominique Goudreault, counsel

For the Respondent: Philippe Giguère, counsel

Decided on the basis of written submissions, filed March 24 and April 14, 2021, and September 3 and 20, 2024.
(FPSLREB Translation)

REASONS FOR DECISION **(FPSLREB TRANSLATION)**

I. Application before the Board

[1] This decision deals only with an objection about respecting a time limit and the application for an extension of that time.

[2] On February 14, 2020, Frantz-Gregory Gracia, the grievor (also "the applicant"), filed a grievance challenging his dismissal from the Correctional Service of Canada ("the respondent"). At that time, he was a member of the bargaining unit represented by the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN or "the bargaining agent").

[3] On March 3, 2021, the bargaining agent sent the Federal Public Sector Labour Relations and Employment Board ("the Board") notice of a reference to adjudication (a Form 21) for the grievance in question. The form indicated that the bargaining agent represented the grievor and that the date on which the respondent delivered its decision at the final level of the grievance process was June 16, 2020.

[4] On March 24, 2021, the respondent informed the Board that it opposed the grievance's reference to adjudication as it was out of time since it was referred more than eight months after the respondent's final-level response.

[5] Under s. 90(1) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), "… 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." The applicable collective agreement, between the Treasury Board and the UCCO-SACC-CSN, states that weekends and paid statutory holidays are excluded from that calculation.

[6] On April 14, 2021, the bargaining agent provided the applicant's position on the respondent's objection, as follows:

> [Translation]
>
> …
>
> *Although the grievance was filed and referred to the final level of the grievance process within the prescribed time limits, it is undisputed that it was referred to adjudication beyond the time limits provided in section 90 of the* Federal Public Sector Labour

Relations Regulations. *That said, we submit that there is a clear, cogent, and compelling reason for the delay.*

After he initially filed his grievance, the grievor informed the bargaining agent that from then on, he wanted an outside lawyer to represent him; it then provided him with the different documents related to his file. It was understood that his new counsel would take over the grievance process from that point.

At the same time, the grievor was the subject of criminal proceedings. The employer relied on the charges to discipline [Mr. Gracia] *under the Correctional Service Canada's Code of Discipline, which provides this:*

> *"8. An employee has committed an infraction, if they:*
>
> *…*
>
> *(d) commit an indictable offence or an offence punishable on summary conviction under any statute of Canada or of any province or territory, which may bring discredit to the Service or affect their continued performance with the Service."*

On February 5, 2021, the grievor emailed the bargaining agent, to inform it that his criminal-file hearing was scheduled for April 2021 and that his counsel sought certain information and documents to begin referring the grievance to adjudication.

The bargaining agent then contacted the grievor and realized that his counsel had not yet referred the grievance to adjudication. Rightly or wrongly, the grievor sincerely believed that his criminal trial had to conclude before the grievance could be referred to adjudication. It is true that the outcome of the criminal trial is important in this case since the mere fact of being charged with a criminal act is not considered an offence under the Code of Discipline; it is necessary to "[commit] an indictable offence"… Thus, since the grievor was presumed innocent until he was convicted or pled guilty, the criminal trial's outcome is decisive in this case.

Given that new information, the bargaining agent advised the grievor to complete the necessary documentation to refer his grievance to adjudication without awaiting the outcome of his criminal trial, in particular because of the time limits set out in the Federal Public Sector Labour Relations Regulations. *The grievance was referred to the Board on March 3, 2021.*

Therefore, the error was made in good faith, and we respectfully submit that the grievor should not be penalized.

And given the magnitude of the issue for the grievor (this grievance is about his dismissal), it would be unreasonable to deny him his right to a hearing for a procedural matter. As the appeal courts have repeatedly pointed out, form must not take precedence over substance.

> *In conclusion, the grievor requests that the employer's objection be dismissed. In the alternative, he requests that the timeliness objection be taken under reserve and decided with the decision on the merits, to allow him to testify and introduce evidence on this issue.*
>
> …

[7] Although by its position, the bargaining agent attempts to provide a reason for the delay, no request was made for an extension of time under s. 61(b) of the *Regulations*. That section provides that in the interest of fairness, the Board may grant an extension of time to refer a grievance to adjudication "on the application of a party".

[8] That point was discussed at a pre-hearing conference with the parties on August 2, 2024. I agreed to give them a final opportunity to set out their positions. I encouraged them to submit to me more detailed comments and to include case law to support their arguments.

[9] On September 3, 2024, the applicant's new representative, Dominique Goudreault, made the extension-of-time application. The issues that the bargaining agent raised on April 14, 2021 (reproduced earlier) were simply reiterated verbatim to support the application, which did not refer to any case law to support the arguments.

[10] The respondent submitted its additional arguments on September 20, 2024, including the case law supporting its position. The following conclusion in its document sums up its position well:

> [Translation]
>
> *In this case, delayed labour relations are denied labour relations. Extending time limits is not in the interests of labour relations or fairness. No clear, cogent, and compelling reasons justify the delay. That said, even if the Board evaluates all the criteria, the application should be dismissed. The length of the delay is measured in many months. It is long, considerable, and unreasonable. The grievor did not exercise due diligence. The prejudice to the employer, labour relations, and the Board's institutional interest is considerable. Recently, the principle of (administrative) judicial economy has opposed such an application. Accordingly, the grievance should be denied, as it was referred to adjudication outside the time limits.*
>
> …

[11] The applicant chose not to reply to the respondent's statement.

[12] For the following reasons, I find that the applicant did not meet the criteria to justify granting an extension of time.

II. Analysis and reasons

[13] Following from everything stated so far, to comply with s. 90(1) of the *Regulations*, the grievance should have been referred to adjudication no later than August 14, 2020. Despite that, it was not referred until March 3, 2021, which represents a delay of more than six months. The applicant requests that I exercise my discretion under s. 61(b) of the *Regulations* in the interest of fairness and that I grant him the extension of time.

[14] The Board normally uses the criteria developed in *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, to analyze extension-of-time applications. The criteria are as follows:

- the delay is justified by clear, cogent, and compelling reasons;
- the length of the delay;
- the applicant's due diligence;
- the balance between the injustice to the applicant were the extension denied and the prejudice to the employer were it granted; and
- the grievance's chance of success.

A. The length of the delay

[15] The length of the delay is significant — not a few days or weeks, but more than six months.

[16] However, as the Board's case law sets out, in some cases with longer delays, extensions of time have been granted. *Rinke v. Canadian Food Inspection Agency*, 2005 PSSRB 23 at para. 16, stated as follows:

> *[16] Depending upon a number of facts, five months may be reasonable or unreasonable. There is no magic threshold where one can say that anything that is transmitted before the threshold is reasonable, but that something that is transmitted after is not. It depends on the facts of each case.…*

[17] My interpretation of that quote is that the mere duration of the delay is not determinative; it must be examined in the context.

B. The absence of a clear, cogent, and compelling reason

[18] I analyzed the bargaining agent's reason, which the applicant's counsel repeated verbatim, and I cannot conclude that it provided a clear, cogent, and compelling one.

[19] Very little was provided to explain the reason for the delay. And the information that was provided is contradictory. In effect, the applicant argued that the delay occurred because he believed that his criminal trial had to conclude first before he could refer the grievance to adjudication. On the other hand, he also indicated that on February 5, 2021, he emailed the bargaining agent and requested specific information, to begin referring his grievance to adjudication. The same email indicated that his criminal trial had not yet taken place. That statement clearly contradicts his contention that he believed that he his criminal trial had to conclude before he could refer his grievance to adjudication. No further explanation was provided.

[20] It is not for the Board to fill in gaps or to guess what might have happened when an applicant's justifications are insufficient or illogical. The applicant has the onus. He or she must clearly explain the reasons for the delay.

[21] In this case, the applicant's explanation is not clear or cogent and certainly is not compelling.

C. The applicant's lack of due diligence

[22] I find no evidence that the applicant exercised due diligence. His explanation is that he felt that his criminal trial had to conclude before he could refer his grievance to adjudication. In other words, he alleges that he was not aware of his obligation under the *Regulations*.

[23] To establish due diligence, action is required. Mere ignorance of the procedure to follow is no excuse. At a minimum, an applicant must demonstrate that they made efforts to obtain information or to observe the procedure (see *Kunkel v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 28). The information in question is not difficult to find. All the provisions of the Board's laws and regulations are available on its website. And it has procedural guides that explain that information clearly and simply.

[24] As he did not allude to making any efforts to gather more information, I cannot conclude that the applicant exercised due diligence.

D. The prejudice to the respondent exceeds the injustice to the applicant

[25] The applicant submits that since his grievance is about his dismissal, it would be unreasonable to deny him his right to a hearing on a procedural matter. He submits that the appeal courts have repeatedly stated that form should not take precedence over substance. Despite that reference, no decision was presented with facts similar to this case.

[26] In any event, it was not a procedural error in this case. Rather, in this situation, the applicant and his representative simply made no effort to inquire into the procedure to follow.

[27] It is clear that the applicant would suffer significant injustice were I to refuse to exercise my discretion to extend the time limit. However, this fact cannot be the only reason to exercise it. Otherwise, in all dismissal cases, the delays would be meaningless.

[28] The time limits set out in the Board's regulations are prescriptive and obligatory, and the parties must respect them. They should not be dismissed lightly. I fully concur with the Board's statement in *Parker v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 57 at para. 4, as follows:

> *[4] Legislated time limits are considered mandatory and are meant to be respected by all parties. The discretion to extend them should be exercised exceptionally and judiciously. Indeed, the* Regulations *require the Board to extend time limits only in the "interest of fairness". What this means, and what this Board's jurisprudence has established, is that a party seeking an extension of a time limit must put forward a convincing case that it is in the interest of fairness to extend it.*

[29] It is clear that in any extension-of-time application, an applicant can legitimately convey that he or she would suffer an injustice were the extension of time refused since he or she would lose the opportunity to present their grievance. However, in all such cases, it is also clear that the applicants had the opportunity in the first place to protect their interests in pursuing their grievances by simply observing the required time limits. That sets out the importance of the reason for the delay.

[30] The applicant cannot rely solely on his injustice. He had to demonstrate "… a convincing case that it is in the interest of fairness to extend it", as *Parker* states. He

offered no clear, cogent, and compelling reason and exercised no due diligence to protect his interests.

[31] In this context, I find that the prejudice to the respondent is greater. It has the right to expect that the parties will respect the time limits with respect to labour relations and that the Board will extend a time limit only in the cases that deserve it rather than automatically.

[32] The prejudice caused by not respecting the prescribed time limits is well explained in *Toppin (Re)* (2006), 123 C.L.R.B.R. (2d) 253. Although it dates from 2006, and the Alberta Labour Relations Board rendered it, nonetheless, I think that it eloquently summarizes the labour relations issues in Canada with respect to deadlines — including in the federal public sector. The following paragraphs summarize that point well:

> …
>
> *[31] … We start our task from the proposition that it is highly meaningful that the Legislature has set a time limitation, even a discretionary one, of 90 days upon the filing of complaints before this Board. Compared to the limitations for commencement of most civil actions in the Courts, this is a short limitation period indeed. It is reminiscent of the 30-day limitation period for filing of applications for judicial review of the Board's decisions in s. 19(2) of the Code. In our opinion, both provisions address what the Board in the Sam Post case, supra, called the "peculiarly prejudicial effect of delay in labour matters" (at [paragraph] 19).*
>
> *[32] Delay in labour relations litigation is peculiarly prejudicial and corrosive for at least these reasons that we can discern. First, instead of the ordinary two-sided employment relationship, labour relations statutes govern the much more complex three-sided relationship of employer, employees and trade union. They do this partly through the instrument of the collective agreement, which is itself a product of a complex process, not just of balancing employer interests against employee interests, but of balancing among competing employee interests. Seniority provisions are just one example of a collective agreement term that balances among competing employee interests. Second, labour relations statutes create systems of workplace governance with many time-sensitive features. Once the right of collective bargaining is established, one party can periodically compel the other to bargain. If bargaining is not successful, parties can as a last resort have recourse to the drastic economic pressure of a strike or lockout, subject to some complex rules about process and timing. Once a collective agreement is reached, it is an agreement for a term, not of*

> *indefinite duration; and that term determines the times at which another round of bargaining may begin, and when employees may abandon collective representation or replace their bargaining agent. And a collective agreement must feature a method of resolving differences arising out of the agreement, which is almost universally a grievance procedure with short time limits, culminating in grievance arbitration through which reinstatement of employment is a common remedy.*
>
> *[33] These factors mean that labour relations disputes typically affect many persons, not just the immediate litigants. Let us take a grievance arbitration example. When an employee is terminated, another employee often replaces him or her. Often this sets off a chain of job postings and job bids resolved by some combination of ability and seniority. Employees leave old jobs, inside or outside the organization, to take up new ones, and they rely on the stability of the new job in making their employment choices. The longer the termination is in dispute, the longer that the post-termination state of affairs can be only provisional.…*
>
> …

[33] I take from the great labour relations ecosystem described in *Toppin* the importance of respecting the prescribed time limits and the impact that extending them has on the system's proper functioning. For that reason, the Board must exercise judiciously its discretionary power to extend a time limit. Were its power were used commonly and routinely, established time limits would be of little importance, and it would erode the reasons they were established in the first place.

E. The grievance's chance of success

[34] I do not accept this criterion for the purposes of my analysis since it is impossible at this stage to rule on it in the absence of any evidence relating to the grievance itself.

III. Conclusion

[35] The Board's rules and regulations set out many deadlines that must be respected. Respecting them is essential to maintaining good labour relations and provides the parties with finality in the settlement of their disputes. Were those factors not important, there would be no need for deadlines.

[36] I reviewed the case law that was presented to me, and my opinion is that this situation raises considerations similar to those presented in *Popov v. Canadian Space Agency*, 2018 FPSLREB 49. In that case, the grievor was also terminated and requested

an extension of the time limit to refer his grievance to adjudication, after a delay of more than 13 months. Paragraphs 76 and 77 read as follows:

> *76 … It is easy to see that the grievor could perceive being denied the opportunity to be heard as an injustice. However, the employer is entitled to turn the page when it believes a matter has been settled once and for all. The idea behind timelines is precisely to give the parties an idea of what can be expected. It would appear unfair to submit the employer to a grievance process that it no longer expects.*
>
> *77 The other preceding factors are also at play. In the face of clear and compelling reasons, with due diligence exercised by the grievor, the inconvenience for the employer might be superceded by the potential injustice to the grievor. However, in this case, having found that the grievor was simply too tardy in referring the grievance to adjudication, without a good reason, I find the inconvenience to the respondent outweighs the potential injustice to the grievor.*

[37] In this case, I reach the same conclusion. The applicant did not provide a clear, cogent, and compelling reason for the delay or demonstrate due diligence. I find that the circumstances are such that they did not persuade me to exercise my discretionary power and grant the extension of time.

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

(The Order appears on the next page)

IV. Order

[39] The objection is allowed.

[40] The application for an extension of time is dismissed.

[41] The grievance with Board file no. 566-02-42663 is denied.

May 5, 2025.

FPSLREB Translation

Audrey Lizotte,
a panel of the Federal Public Sector
Labour Relations and Employment Board