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File: 566-02-42682

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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

ANDOVER CHAVANNEZ

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Chavannez v. Deputy Head (Correctional Service of Canada)

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: Himself

For the Respondent: Marc Séguin, counsel

Decided on the basis of the documents on file.
[FPSLREB Translation]

I. Individual grievance referred to adjudication

[1] This decision was rendered without a hearing. The *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) authorizes the Federal Public Sector Labour Relations and Employment Board (“the Board”) to dispose of any matter before it without a hearing (s. 22). The grievance is denied due to a deemed discontinuance. Andover Chavannez (“the grievor”) is unreachable.

II. The Board’s jurisdiction, and the statutory interpretation of s. 11.1 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; “the Regulations”)

[2] Under s. 11.1 of the *Regulations*, the Board may initiate a review of a proceeding’s status by inviting the parties to comment on the deemed withdrawal. For quick reference, this is the text of that provision:

Deemed withdrawn

11.1 The Board may, on its own initiative, send a notice of status review to all of the parties that requires them **to provide representations stating the reasons why the matter should not be deemed to be withdrawn** and, if there is no response within the period determined by the Board, deem the matter withdrawn.

Présomption de dessaisissement

11.1 La Commission peut, de sa propre initiative, envoyer à chacune des parties un avis d’examen de l’état de l’instance **exigeant qu’elles présentent leurs observations indiquant les raisons pour lesquelles elle ne devrait pas considérer qu’il y a eu dessaisissement** et, à défaut de réponse dans le délai qu’elle fixe, considérer qu’il y a eu dessaisissement.

[Emphasis added]

[3] In this case, the Board was unable to inquire into the parties’ comments on that provision, as it is unable to reach the grievor.

[4] For the purposes of this decision, although s. 11.1 of the *Regulations* uses the term “withdrawn”, I will use the term “discontinued”, which is close to the term “abandoned”, for the following reason.

[5] The wording of the French version of s. 11.1 differs somewhat from that of the English version, by the use of the term *dessaisissement*. The English version, which uses the words “deemed to be withdrawn”, seems to suggest a presumed withdrawal or discontinuance. I believe that the term *dessaisissement* implies a loss of power or jurisdiction. For example, by virtue of the *res judicata* principle, a decision maker or

tribunal may be relieved of their or its power to deal with a matter in dispute because the matter has already been decided. Similarly, a court may be relieved of a case in favour of another court. Thus, the legal effect of a *dessaisissement* and that of a “discontinuance” could be different.

[6] The Federal Court of Appeal’s decision in *Philipos v. Canada (Attorney General)*, 2016 FCA 79 at para. 15, explains the effect of a “discontinuance”. According to that decision, it is theoretically possible that after a discontinuance, a new proceeding about the same subject matter could be started. That decision also states that such a procedure could be defended on the basis of a limitation period’s expiry. For example, a “withdrawal” would result in the loss of jurisdiction to decide an issue raised in a case. A decision maker simply becomes unseized of a case due to a “withdrawal”.

[7] However, it is not the question that I must answer, which is whether the grievor is presumed to have “discontinued”, rather than “withdrawn”, his grievance. For the reasons in the following paragraphs, I find that he discontinued it.

III. Background

[8] The grievor challenged the decision of his former employer, the Correctional Service of Canada (“the employer”), to dismiss him. On March 8, 2021, when the grievance was referred to adjudication with the Board, he was represented by the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN; “the union” or “the bargaining agent”).

[9] Until January 8, 2024, the union participated in submissions about the grievance, including those related to a preliminary objection that the employer made.

[10] The grievance was scheduled for a hearing from February 13 to 16, 2024, and the Board invited the employer and the union to a pre-hearing conference, which was scheduled for January 9, 2024.

[11] On January 8, 2024, the union informed the Board and the parties involved in the file that it “[translation] ... withdrew its support for the grievance in question”.

[12] On January 9, 2024, the employer attended the pre-hearing conference, but after a brief appearance, it was cancelled, as the grievor was neither present nor represented.

[13] After the pre-hearing conference, the employer shared two email addresses for the grievor that are in the file. The Board also asked the union to provide an updated email address for him.

[14] On January 9, 2024, the union informed the Board that it did “[translation] ... not have a valid email address for Mr. Chavannez. We had to share our decision with him by registered mail.”

[15] On January 9, 2024, the Board’s Registry sent the following message to the two email addresses that it had received from the employer, one of which appeared in the grievance referral form:

[Translation]

...

I acknowledge receiving on January 8, 2024, an email from ... advising the Board that the bargaining agent (UCCO-SACC-CSN) withdrew its support and representation on the file noted earlier.

*As your bargaining agent is no longer representing you, please advise the Board, by no later than **January 16, 2024**, as to how you would like to proceed with your referral to adjudication. Please note that a hearing of this matter is scheduled for **February 13 to 16, 2024**, in person, in Montréal, QC.*

If you wish to continue and intend to be represented by someone else, please provide the Board with that person’s name, email address, and telephone number, so that all relevant documentation can be sent properly.

Please note that it is the grievor’s responsibility to inform the Board of any change to a residential address or telephone number.

***ALSO NOTE** that if you do not respond, or if you do not appear at the hearing or any eventual reconvening of it, the panel of the Board may rule on the matter given the evidence and submissions made to it at that time without further notice to you.*

Failing to reply by the date set out earlier may result in the file being closed.

...

[Emphasis in the original]

[16] However, it appears that that message was not delivered to the grievor’s two email addresses. The emails were returned with the word “undeliverable” noted.

[17] On January 10, 2024, the Board sent the same message, this time by Priority Post, to the address that appears in the referral-to-adjudication form. It did not receive a reply from the grievor.

[18] On January 17, 2024, as the grievor had not replied to the Board's several communications, the hearing scheduled for February 13 to 16, 2024, was adjourned.

[19] On December 4, 2024, since it had received no news from the grievor, the Board attempted once more to reach him using the two email addresses and by a letter sent by Priority Post, again to the mailing address in the file.

[20] The letter stated that if the Board did not receive a response from the grievor by no later than February 13, 2025, it would have no choice but to close the file.

[21] On January 8, 2025, the Board was informed that the letter had been returned. It was labelled "return to sender" and "unclaimed".

IV. Reasons

[22] I find that there is sufficient information to conclude that there is a deemed discontinuance.

[23] After the union withdrew its representation, the Board's Registry attempted several times to reach the grievor using the contact information in the file, without success.

[24] In the absence of a response or indication from the grievor that he wishes to proceed with his grievance, I find that he is deemed to have abandoned it. The union no longer represents him, and the Board has no other contact details to reach him.

[25] Section 89(1) of the *Regulations* requires that a notice of a grievance's referral to adjudication include, among other things, the names and contact information of the grievor and his or her authorized representative, if any. The grievance referral Form 21, which was placed in the file, contains a mailing and an email address for the grievor. The Board did not receive notice of a change to contact information from him, and if such a change occurred, he was responsible for notifying the Board and providing the valid addresses. See *Meisterhans v. Canada Revenue Agency*, 2024 FPSLREB 156 at para. 21; or *McKinnon v. Deputy Head (Department of National Defence)*, 2016 PSLREB 32 at paras. 77 and 78.

[26] The circumstances of this case are similar to those in *Chabi v. Deputy Head (Public Services and Procurement Canada)*, 2023 FPSLREB 111. As I noted in *Chabi*, I find that in this case, it would not be in the interests of the public or the effective

administration of justice to keep this file open indefinitely, without any way of communicating with the grievor.

[27] It was the grievor's responsibility to notify the Board of his valid address. It was also up to him to move his case forward. The Board has no information as to the challenges or circumstances that he would face that would explain his failure to participate in the adjudication of the grievance that he filed with the Board on March 8, 2021.

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

(The Order appears on the next page)

V. Order

[29] The grievance is denied.

May 8, 2025.

FPSLREB Translation

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