

Date: 20250520

File: 566-02-45319

Citation: 2025 FPSLREB 63

*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

KARINE GAGNÉ

Grievor

and

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

Respondent

Indexed as

Gagné v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Patricia Harewood, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Herself

For the Respondent: Simon Ferrand, counsel

Decided rendered based on the documentation on file.
(FPSLREB Translation)

REASONS FOR DECISION**(FPSLREB TRANSLATION)**

I. Individual grievance referred to adjudication

[1] Karine Gagné (“the grievor”) was a correctional officer (CX-01) at the Archambault Institution of the Correctional Service of Canada (CSC) in Sainte-Anne-des-Plaines, Quebec. On April 28, 2022, the CSC’s deputy head (“the respondent”) terminated her employment.

[2] On May 24, 2022, she filed a grievance directly at the final level of the grievance process contesting the decision to terminate her employment. The respondent denied it at that level. Her bargaining agent referred it to the Federal Public Sector Labour Relations and Employment Board (“the Board”) on July 28, 2022, under s. 209(1)(b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[3] The grievance reads as follows:

[Translation]

I contest the employer’s decision to dismiss me that was made on or about April 29, 2022. It was unfounded in fact and in law, did not take into account my medical incapacity to work, and constituted an abusive and discriminatory exercise of the employer’s right to manage.

[4] The Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN or “the bargaining agent”) represented the grievor until February 1, 2024, when it ended its representation.

[5] Since February 1, 2024, the Board has received no communications from the grievor. This decision’s purpose is to make a status review of the proceedings to which she did not respond. The question is to determine whether the absence of a response to the status review and to the Board’s multiple correspondences constitutes a presumption that she has withdrawn the grievance. For the following reasons, the Board has determined that the grievance has been withdrawn. It is considered withdrawn on that ground.

II. Procedural history

[6] In an email dated October 13, 2023, the Board's registry informed the parties that the hearing was scheduled from March 11 to 15, 2024, by videoconference. The hearing notice was emailed to the grievor.

[7] On December 19, 2023, the respondent contacted the Board and copied all the parties. It requested an immediate pre-hearing conference to discuss whether the hearing would proceed on March 11. It informed the Board that it made several attempts to contact the grievor by telephone and email and through her bargaining agent representative, without success, to retrieve her CSC badge and employee card. It also indicated that the bargaining agent was having difficulties reaching her.

[8] The respondent requested that the Board communicate directly with the grievor, to inform her of an order to communicate her intentions as to whether she would proceed with her grievance, by a certain deadline, failing which her grievance would be considered abandoned and the file would be closed. It provided her last known mailing and email addresses.

[9] The bargaining agent responded on January 17, 2024. It said that it had managed to reach her. In addition, it noted that it did not disagree with the respondent's request.

[10] On January 25, 2024, I held the pre-hearing conference. The bargaining agent's representative and the respondent's counsel were present. At the start, its representative noted that the bargaining agent had great difficulty contacting the grievor and that it was ultimately successful through social media because the mailing address and telephone number were no longer active.

[11] The bargaining agent indicated that its national executive was in the process of determining whether to continue with the grievor's representation. It agreed to send her new contact information to the Board and to confirm by February 2, 2024, whether it would continue to represent her. The respondent requested that the hearing be held in person. However, I determined that it was a premature request and that the respondent had to wait and see whether the hearing would proceed.

[12] On January 25, 2024, the bargaining agent sent the grievor's new contact information to the parties and the Board, including a new phone number and an email

address. Her email address had not changed. The bargaining agent did not provide a mailing address.

[13] On February 1, 2024, the bargaining agent representative emailed the parties and the Board that the grievor's representation had ceased.

[14] On February 2, 2024, the Board emailed the grievor and copied the respondent. It sought to determine whether she had a new representative and was moving forward with her grievance. It informed the parties that it was their responsibility to notify the Board of all address changes.

[15] On February 5, 2024, a registry officer attempted to contact the grievor at the new number that the bargaining agent had provided. No one answered.

[16] On February 12, 2024, the Board sent the grievor another registered letter, to the address that the respondent provided and by email, asking whether she intended to attend her hearing scheduled for March 11. The Board specified a deadline of February 16 to respond.

[17] The grievor did not reply to any of the Board's communications.

[18] Given the grievor's failure to respond by the deadline, the Board cancelled the hearing. A registered letter to that effect was sent to the parties, also by email.

[19] On March 14, 2024, the registered letter was returned unclaimed to the Board.

[20] On November 4, 2024, on its own initiative, the Board sent the grievor a status-review letter by email and registered mail, requiring her to present her submissions as to why the Board should not consider the file abandoned and stating that if she did not respond, the file would be closed. It asked her and the respondent to contact it by November 22, 2024.

[21] The Board received no response to the status review.

[22] The registered letter containing the notice of status review was returned to the Board on January 7, 2025.

[23] Since the Board did not receive any submissions from the respondent, the Board gave it until February 4, 2025, to provide additional arguments if necessary, given the grievor's lack of response.

[24] The respondent wrote to the Board on February 3, 2025, informing it that it intended to file submissions that week on the status review.

[25] On February 11, 2025, the Board wrote to the parties, to indicate that it had not received any submissions from the respondent about the status review, and it specified a February 17, 2025, deadline to provide them.

[26] The respondent provided its submissions about the lack of response to the status review on February 17, 2025.

III. Summary of the arguments

[27] The grievor did not file any submissions about the status review and the presumed withdrawal. Since she began representing herself in February 2024, she has had no communications with the Board by any means, including by telephone, email, or mail.

A. For the respondent

[28] The respondent argued that there are no grounds to justify that the presumed withdrawal should not apply.

[29] It asked that without holding a hearing, the Board deny the grievance, based on it being abandoned, and that it close the file.

[30] The respondent described the context of the events that led to the dismissal. Since this decision does not address the grievance's merits, it is not necessary to examine that context in depth.

[31] The respondent stated that it had not received any communication from the grievor since October 13, 2023.

[32] The respondent relied on *Bastasic v. Canada Revenue Agency*, 2024 FPSLREB 24 at para. 57, to explain the direction to take with respect to the Board's notice of status review, including the following four questions:

- 1) Have the parties adequately explained the delay?
- 2) Has the party responsible for the case provided a reasonable path to resolve it?
- 3) Would proceeding with the case violate the rules of procedural fairness because the delay impaired a party's ability to answer the case against it?
- 4) Would proceeding with the case constitute an abuse of process and bring the administration of justice into disrepute?

[33] The respondent submitted that the grievor's failure to respond to the Board is determinative. It demonstrates that she has no intention to pursue her grievance. Thus, the Board should consider that an abandonment has taken place.

[34] In addition, the grievor has an obligation to ensure that her contact information on file is up to date (see *Tshibangu v. Deputy Head (Canadian Food Inspection Agency)*, 2011 PSLRB 143 at para. 15) and to inquire as to her grievance's status.

[35] In this case, the grievor has demonstrated no willingness to pursue her grievance at a hearing.

IV. Reasons

[36] The Board is to determine whether the presumed withdrawal applies in this case. For the following reasons, I have determined that a withdrawal has occurred and that the grievor has abandoned her grievance.

[37] As the grievor did not respond to the status review and did not respond to any Board communication, I gave the respondent an opportunity to make written submissions about the review, even though it was not necessary.

[38] The respondent submitted that no grounds justify that the presumed withdrawal should not apply and requested that the grievance be considered abandoned, as the grievor did not explain the delay or provide a reasonable path to resolve the case. It submitted that she has not communicated with the Board since October 2023 and that she has demonstrated no willingness to pursue her grievance at a hearing.

[39] The bargaining agent represented the grievor until February 1, 2024. At the pre-hearing conference on January 25, 2024, it informed the respondent and the Board that her address and telephone number were no longer active.

[40] Since February 5, 2024, the Board's registry has used the grievor's new phone number and has tried to reach her by phone, without success.

[41] The bargaining agent provided no new mailing address for the grievor until it terminated her representation. However, the respondent provided her last known mailing address on December 19, 2023. The grievor accepted none of the registered letters sent to that address. In particular, the February 12 and November 4, 2024, letters were returned to the Board as unclaimed.

[42] According to the information available to the Board, the grievor has not changed her email address since her grievance was referred to adjudication. However, she has not responded to any of its emails since February 1, 2024, the date on which the bargaining agent terminated her representation.

[43] The Board informed the parties in its correspondence that they are responsible for informing it of any changes to contact information.

[44] In this case, the grievor filed this grievance to contest her termination. All the parties should take this matter seriously, especially the grievor, who was terminated. But she seems no longer interested in her grievance.

[45] The status review that the Board initiated did not elicit any communication or response from the grievor.

[46] Under s. 11.1 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), the Board began this process to determine whether it should proceed with the file. In the absence of a response, it noted that the grievance would be deemed withdrawn.

[47] Section 11.1 of the *Regulations* reads as follows:

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

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

*period determined by the Board,
deem the matter withdrawn.*

*réponse dans le délai qu'elle fixe,
considérer qu'il y a eu
dessaisissement.*

[Emphasis added]

[48] In the recent *Bastasic* decision (at paragraphs 58 to 61), the Board provided a fairly rigorous overview of a notice of status review's purpose, which is to enable the Board to better manage its workload by dealing with inactive cases. In that decision, it developed four questions, which are not exhaustive. The party that launched the case must explain how it satisfies the first two, namely, 1) adequately explaining the delay, and 2) providing a reasonable path forward to resolve the case.

[49] In addition, the Board need not examine the third and fourth questions if the party responsible for the case does not satisfactorily explain the reason for the delay and does not provide a reasonable path forward.

[50] In this case, the grievor did not respond to the status review before or after November 22, 2024. To date, the Board has received no communication from her about it. This situation involves the grievor not communicating and is similar to the one in the Board's recent decision in *Chavannez v. Deputy Head (Correctional Service of Canada)*, 2025 FPSLREB 55. In that case, after it made several attempts to contact the grievor, without response, the Board decided that it would not be in the interests of the public and the effective administration of justice to keep the file open indefinitely without any means of communicating with the grievor. The same is true in this case.

[51] Either the grievor has moved and does not wish to share her address, or she does not want anyone to reach her. When the bargaining agent represented her, it had trouble reaching her, but contact occurred all the same. Using the information that it provided, the Board was unsuccessful.

[52] In addition, since February 2, 2024, when the grievor began representing herself, the Board has received no emails, calls, or mail from her.

[53] At a minimum, a grievor who files a grievance before an administrative tribunal, such as the Board, expects that it will contact with them, to provide a hearing date, information about the parties' availability for a pre-hearing conference or mediation session, if any, or to participate in any other pre-hearing action.

[54] The grievor had to respond within a reasonable time when the Board attempted to reach her, to determine whether she was proceeding with her grievance.

[55] The effective administration of justice cannot progress without the grievor who referred the grievance to adjudication before the Board.

[56] Since neither the respondent nor the Board's registry is able to reach the grievor, and she has not contacted the Board since her hearing was cancelled in March 2024, her grievance cannot move forward.

[57] It is possible that the grievor might have experienced a time in which advancing her grievance was no longer a priority. Life is often unpredictable, and everyone has moments in which the essential must be prioritized. However, it is incumbent on the grievor to communicate her intentions rather than leave the respondent and the Board hanging.

[58] The grievor was responsible for sending her new contact information to the Board (see *Tshibangu*, at para. 15). In addition, she had to take reasonable steps to inquire as to her grievance's status (see *Smid v. Deputy Head (Courts Administration Service)*, 2014 PSLRB 24 at para. 26; and *Meisterhans v. Canada Revenue Agency*, 2024 FPSLREB 156).

[59] Since the Board made several attempts to contact the grievor by email, telephone, and registered mail, and since nothing was successful, including the status review, she has not done the minimum required to demonstrate an interest in pursuing her grievance. As noted in *Patwell v. Deputy Minister of Employment and Social Development*, 2018 FPSLREB 37 at para. 31, her behaviour is that of someone who has clearly abandoned their grievance.

[60] For all those reasons, the grievor did not provide any justification as to why considering the grievance withdrawn under s. 11.1 of the *Regulations* should not apply. Therefore, I find that the presumed withdrawal applies and that the grievance was abandoned.

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

(The Order appears on the next page)

V. Order

[62] The grievance is deemed withdrawn.

May 20, 2025.

FPSLREB Translation

**Patricia Harewood,
a panel of the Federal Public Sector
Labour Relations and Employment Board**