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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

IMTIAZ RAJAB

Employee

and

DEPUTY HEAD
(Courts Administration Service)

Respondent

Indexed as
Rajab v. Deputy Head (Courts Administration Service)

In the matter of a reference to adjudication

Before: Christopher Rootham, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Employee: Melynda Layton, counsel

For the Respondent: John Mendonça

Decided on the basis of written submissions, filed January 24, February 21, and March 7 and 12, 2025.

REASONS FOR DECISION

I. Overview

[1] On October 22, 2024, Imtiaz Rajab filed a reference to adjudication with the Federal Public Sector Labour Relations and Employment Board ("the Board"). The Courts Administration Service ("the employer") objected to his reference to adjudication on the basis that he never filed a grievance. I agree. Mr. Rajab made a number of complaints and emailed his employer about his situation; however, he never presented anything to the employer that could be called a grievance. Therefore, the Board has no jurisdiction to hear this case, and I must dismiss it.

II. There must be a grievance before a reference to adjudication is made

[2] The underlying dispute between Mr. Rajab and the employer is whether he resigned (according to the employer) or whether he was dismissed (according to Mr. Rajab). Mr. Rajab has provided a detailed explanation for why he says he never resigned his employment. I am not making any decisions about that now; the only issue before me at this stage is whether the Board has jurisdiction to hear this reference to adjudication.

[3] Grievances about any matter (including a termination of employment) are not presented to the Board immediately. They are presented to the employer. Only after the employer has had an opportunity to decide the grievance can it be referred to adjudication with the Board. This is evident from ss. 209(1), 225, and 241 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which read as follows:

Reference to adjudication	***Renvoi d'un grief à l'arbitrage***
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 ….*	***209 (1)*** *Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un* membre*, au sens du paragraphe 2(1) de la* Loi sur la Gendarmerie royale du Canada*, peut renvoyer à l'arbitrage tout grief individuel portant sur* […]

…	[…]
Compliance with procedures	***Observation de la procédure***
225 *No grievance may be referred to adjudication until the grievance has been presented at all required levels in accordance with the applicable grievance process.*	***225*** *Le renvoi d'un grief à l'arbitrage ne peut avoir lieu qu'après la présentation du grief à tous les paliers requis conformément à la procédure applicable.*
…	[…]
Defect in form or irregularity	***Vice de forme ou de procédure***
241 (1) *No proceeding under this Act is invalid by reason only of a defect in form or a technical irregularity.*	***241 (1)*** *Les procédures prévues par la présente partie ne sont pas susceptibles d'invalidation pour vice de forme ou de procédure.*
Grievance process	***Procédure de grief***
(2) *The failure to present a grievance at all required levels in accordance with the applicable grievance process is not a defect in form or a technical irregularity for the purposes of subsection (1).*	***(2)*** *Pour l'application du paragraphe (1), l'omission de présenter le grief à tous les paliers requis conformément à la procédure applicable ne constitue pas un vice de forme ou de procédure.*

[4] The impact of those sections is obvious on their face: an employee with a dispute against their employer must go through the employer's internal grievance process before referring their case to the Board. As the Board put it succinctly in *Kazemi v. Treasury Board (Veterans Affairs Canada)*, 2024 FPSLREB 41 at para. 64: "Without a grievance having been presented, the Board has nothing to deal with as it has no jurisdiction if no grievance was filed."

III. What constitutes a grievance

[5] The employer submits that Mr. Rajab never filed a grievance because a grievance must be filed using the form it has created, and he never used that form. It relies on s. 67 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), which states, "An employee who wishes to present an individual grievance must do so on the form provided by the employer and approved by the Board …". The employer argues that since none of the documents Mr. Rajab says are his grievance used the grievance form, none of them are grievances.

[6] I reject that argument. As set out earlier, s. 241(1) of the *Act* states that no proceeding under the *Act* is invalid because of a defect of form or technical irregularity. Subsection 241(2) goes on to state that the failure to present a grievance at each level is not a defect in form or technical irregularity, but it does not say that the failure to use the grievance form cannot be a defect in form or technical irregularity. At the risk of saying something obvious, the failure to use a form is a defect in form that can be forgiven under s. 241(1) of the *Act*.

[7] However, the document that an employee states is a grievance must still be something recognizable as a grievance. As the Board stated in *Featherston v. Deputy Head (Canada School of Public Service)*, 2010 PSLRB 72 at para. 80: "Although it is not always necessary to file a grievance using a grievance form, it must be clear to the deputy head that a grievance is being filed …". In that case, the Board concluded that a statement of claim filed in civil court could not be considered a grievance. In *Tuquabo v. Canada Revenue Agency*, 2006 PSLRB 128 (upheld by the Federal Court in 2008 FC 563 and the Federal Court of Appeal in 2008 FCA 387), the Board concluded that a letter addressed to the deputy head requesting an investigation and the maintenance of employment status during that investigation was not a grievance.

[8] As an example of a grievance filed without using a form, in *El-Menini v. Canadian Food Inspection Agency*, 2018 FPSLREB 40 the Board concluded that a letter sent by the employee's counsel which stated "… *please accept this letter as a notice of grievance in lieu of the form set out at s. 67 of the Regulations*" was a grievance (although the Board concluded that it did not have jurisdiction over that grievance because it was referred to adjudication prematurely). I am not suggesting that an employee needs to refer to s. 67 of the *Regulations* for a document to constitute a grievance. However, the document still must be something that an employer would reasonably recognize as a grievance.

[9] The Board set out two essential characteristics of a grievance in *Van Duyvenbode v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2008 PSLRB 90 (upheld by the Federal Court of Appeal 2010 FCA 66). In that case, an employee filed a civil claim which was dismissed because the dispute should have been grieved instead. He then applied to the Board for an extension of time to file his grievance. The Board refused. One of the employee's justifications for the delay grieving was that preparing a grievance was time consuming. In rejecting that

argument, the Board stated at paragraph 45 that in preparing a grievance, "[a]ll that is required is a brief description of the matter being grieved and a description of the corrective action requested."

[10] In *Featherston*, *Tuquabo*, and *El-Menini*, the Board also identified that the document must indicate that it is intended to be a grievance. A court claim and demand letter would not qualify, but a letter stating that it is intended to be a grievance would. It is clear from *El-Menini* that using the word "grievance" is probably sufficient to meet that requirement or some word that is similar enough to "grievance" that the employer ought reasonably to have understood it to be a grievance. But general words such as "claim" (as in *Featherston*), "request" (as in *Tuquabo*), or "complaint" are not sufficient.

[11] Finally, in *Kazemi*, the Board concluded that there had been no grievance filed because the grievance form was sent to the wrong department. In that case, the employee was employed by one department in one bargaining unit, but he filed a grievance with another department under the terms of a collective agreement for a different bargaining unit. The Board concluded that no grievance had been filed because the grievance had not been sent to the employee's immediate supervisor, a requirement in his collective agreement. That same requirement is set out in s. 67 of the *Regulations* which govern Mr. Rajab since he is not unionized. The Board did not have to consider whether providing a grievance to the wrong official is a technical irregularity that can be cured by s. 241(1) of the *Act*; however, its decision is an indication that a grievance must be provided to someone in a position of authority in the employee's department.

[12] In summary, the Board's case law has identified these four essential features of a grievance:

1) it must provide a description of the events being grieved;

2) it must provide a description of the relief sought by the employee;

3) it must use the word "grievance" or a sufficiently similar term that the employer would reasonably recognize that the employee intends the document to be a grievance; and

4) it must be provided to someone in the employee's department with the authority to deal with the grievance or at least the authority to pass it on to someone with that authority.

IV. Mr. Rajab never presented a grievance to the employer

[13] As I said earlier, the employer objected to this reference to adjudication on the grounds that Mr. Rajab never filed a grievance. I issued some directions to address that objection, including a timetable for written submissions. As the first step in that timetable, I directed that Mr. Rajab identify his grievance. His representative sent a 5-page letter containing 29 attachments in response to that direction. In that letter, his representative identified these 5 documents as Mr. Rajab's grievance:

- an email dated October 24, 2023;
- an email dated October 31, 2023;
- an email dated December 4, 2023;
- an email dated February 5, 2024; and
- a letter dated May 4, 2024.

[14] In addition, Mr. Rajab informed the Board that he had made a complaint with the Canadian Human Rights Commission, a harassment complaint under the *Canada Labour Code* (R.S.C., 1985, c. L-2), a complaint to the "Superintendent of Integrity" (which I assume is a complaint under the *Public Servants Disclosure Protection Act* (S.C. 2005, c. 46)), and a complaint under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13) to the Board.

[15] None of the documents referred to by Mr. Rajab could be reasonably recognizable as a grievance. While they meet the first and fourth requirement, none of them meet the third requirement. Therefore, I do not need to decide whether they meet the second requirement.

[16] Mr. Rajab's employment was either terminated or ceased as a result of his resignation on October 23 or 24, 2023. The email dated October 24, 2023, to the Chief Administrator sets out his position that he never submitted any retirement documents (i.e., he never resigned) and states that there should be no processing of his retirement "… while this issue is being sorted out …". Nothing in this email indicates that Mr. Rajab intends it to be a grievance.

[17] The email dated October 31, 2023 reads, in part, "Accordingly, this is a request to let me know of my formal redress in this situation. Is there a grievance process that I can follow?" This is the only time that Mr. Rajab uses the word "grievance" in his correspondence. However, this is still not a grievance; it is a request for information about filing a grievance.

[18] As for the email dated December 4, 2023, from October through December, Mr. Rajab kept corresponding with the employer to dispute that he had resigned and to ask to be paid his salary. The December 4 email is one of his emails in which he demands (again) that his compensation be reinstated and argues that the cessation of his compensation "… is discriminatory and tantamount to an involuntary job termination and constructive dismissal." Again, this is not a grievance; it is just a demand. Mr. Rajab also says that the employer's response to that email on January 30, 2024, was the closure of his grievance. It was not; that email says clearly that it is about the "closure of [his] compensation file." The January 30 email says nothing about a grievance.

[19] The email dated February 5, 2024 is Mr. Rajab writing to someone responsible for compensation to request a detailed analysis of an alleged overpayment. A request for information is not a grievance.

[20] Finally, the letter of May 5, 2024 is about two issues: his outstanding harassment complaints, and the alleged overpayment. It also asks that the recipient of that letter look into those two outstanding matters. This letter is not a grievance.

[21] The complaints that Mr. Rajab has made in other forums are not grievances either. As I stated earlier, in *Featherston*, the Board concluded at para. 80 that "[a] statement of claim cannot be considered to be a grievance." Complaints in other forums cannot be considered a grievance either.

[22] I reviewed all 29 documents submitted by Mr. Rajab, in which he sets out his correspondence with the employer and others about this dispute, not just the 5 he says constitute his grievance. I paid particular attention to the letter prepared by his counsel and sent on November 3, 2023, to see whether it is similar to the letter in *El-Menini* that the Board considered to be a grievance. It is not. It never uses the word "grievance" or a similar term; it also does not provide a description of the relief Mr. Rajab is seeking. I also read his harassment complaint dated November 22 and

added to on November 28 to see whether it could be reasonably recognized as a grievance. It could not. It does not use any term similar to “grievance”, and it does not seek any relief aside from that his complaint be investigated.

[23] For these reasons, I have concluded that Mr. Rajab never filed a grievance.

[24] Mr. Rajab makes other submissions. He relies in part on a letter he received from the Canadian Human Rights Commission on November 29, 2024 stating that it may refuse to deal with his complaint until he has exhausted the grievance process and adding this: “As an employee in the public service, you need to file a grievance under the *Federal Public Sector Labour Relations Act* first.” Mr. Rajab says that this letter confirms that his grievance is properly brought before the Board. That letter says no such thing. It says that he needs to file a grievance; it does not say he has already done so. In any event, Mr. Rajab filed this reference to adjudication a month before receiving that letter, so he cannot rely on it as the basis for his reference to adjudication.

[25] Mr. Rajab argues that the employer never provided him with a copy of its grievance policy or its grievance form, despite his request on October 31, 2023. He also argues that the employer has never referred him to a grievance process. The employer does not deny that. However, that does not mean that he has filed a grievance. To the extent that he is appealing to questions of fairness, s. 241(2) of the *Act* prohibits the Board from ignoring the failure to file a grievance, even if I were to conclude that the employer was partially responsible for that failure.

[26] Mr. Rajab argues that the employer was well aware of the different venues in which he has made complaints about the end of his employment and states that it is disappointing that he has had to file multiple proceedings that stem from the same fact situation. Mr. Rajab is certainly not the first person to make a plea to simplify the resolution of employment disputes in the federal public administration; see, for example, Advisory Committee on Labour Management Relations in the Federal Public Service (Fryer Committee), *Working Together in the Public Interest*, Final Report, Chapter V, s. 5.1 to 5.2 (2001). However, the Board is a creature of statute and has only the jurisdiction granted to it by Parliament. The *Act* is clear in ss. 209(1), 225, and 241(2) that the Board has no jurisdiction to adjudicate a case unless it has been grieved and the grievance presented to the required levels of the grievance process.

The existence of other forums (which Mr. Rajab has used) does not mean that the Board can ignore the statutory limits on its jurisdiction.

[27] In conclusion, the Board has no jurisdiction to adjudicate a case unless the employee has presented a grievance at all required levels of the grievance process. Mr. Rajab never presented a grievance to the employer. Therefore, I must dismiss this reference to adjudication.

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

(The Order appears on the next page)

V. Order

[29] This reference to adjudication is dismissed.

May 29, 2025.

Christopher Rootham,
a panel of the Federal Public Sector
Labour Relations and Employment Board