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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

ERIN TURNBULL

Applicant

and

COMMUNICATIONS SECURITY ESTABLISHMENT

Respondent

Indexed as

Turnbull v. Communications Security Establishment

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: Brian Russell, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Applicant: Eve Berthelot, Public Service Alliance of Canada

For the Respondent: Kerri Fisher

Decided on the basis of written submissions,
filed September 13, 2024, and January 17, February 11, and March 12, 2025.

REASONS FOR DECISION

I. Application to extend the time limit to refer a grievance to adjudication before the Board

[1] This decision is about an application to extend the time limit to refer a grievance to adjudication. For the following reasons, I dismiss the application.

[2] Erin Turnbull (“the applicant”) filed a grievance opposing the Communications Security Establishment’s (“the respondent”) decision to place her on administrative leave without pay for not complying with the *Policy on COVID-19 Vaccination for Employees of the Communications Security Establishment* (“the policy”).

[3] The respondent filed objections with the Federal Public Sector Labour Relations and Employment Board (“the Board”), claiming that the grievance was filed outside the time limit provided in the relevant collective agreement and that the applicant changed the nature of the grievance when she referred the grievance to adjudication under both sections 209(1)(a) and (b) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[4] The *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) states that the Board may decide any matter before it without holding an oral hearing. The information in the parties’ written submissions allow me to decide the issue without a hearing.

II. Summary of the evidence

[5] The applicant is a business analyst, classified UNI-07. She was placed on administrative leave without pay for not complying with the policy on April 4, 2022.

[6] The applicant filed her grievance on April 5, 2022.

[7] It says:

THE “POLICY ON COVID-19 VACCINATION FOR EMPLOYEES OF CSE” IS EXCLUSIONARY AND UNFAIR. IT GOES AGAINST BODY AUTONOMY AND THE PUNISHMENT BY CSE TO RESTRICT MY ABILITY TO PERFORM MY DUTIES AND REMOVE MY INCOME INDEFINITELY IS GROSSLY EXORBITANT.

[8] Under the requested corrective action, it says: “FULL REINSTATEMENT OF DUTIES, SALARY AND BENEFITS”.

[9] The final-level grievance reply was sent to her on August 10, 2022. The next day, her local representative of the Union of National Defence Employees (UNDE) which is a component of the Public Service Alliance of Canada (“the bargaining agent” or PSAC) emailed a UNDE national bargaining agent representative and asked about the next steps for the grievance.

[10] The local representative sent a similar email on September 1, 2022. The national representative responded the same day, advising that the grievance would be transmitted to the PSAC and that he would be in touch the next week.

[11] The deadline to refer the grievance to adjudication was September 19, 2022.

[12] The applicant began maternity leave on July 10, 2023.

[13] The applicant emailed the employer asking for its agreement to extend the time limit to refer the grievance to adjudication on March 28, 2024. On July 25, 2024, the employer advised the applicant that it did not agree to extend the time limit to refer to adjudication.

[14] The grievance was referred to adjudication on September 3, 2024. It was referred under s. 209(1)(a) of the *Act*, interpretation of a provision of the collective agreement and listed “No discrimination (Human Rights) – Form 24”. It was also referred under s. 209(1)(b) of the *Act*, a disciplinary action resulting in termination, demotion, suspension or financial penalty.

[15] The applicant returned from maternity leave on January 6, 2025.

III. Summary of the arguments

A. Changing the nature of the grievance

[16] The respondent argues that the complainant attempted to change the nature of the grievance from the one dealt with in the grievance process. It argues that it is contrary to the principles set out in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.).

[17] The respondent argues that the grievance form does not have any allegations of discrimination, nor are there allegations of a breach of the collective agreement or the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). It argues that the grievance states: "... body autonomy and the punishment by CSE ...". According to the respondent there is no clear nexus between the grievance and a provision of the collective agreement.

[18] The applicant argues that the inclusion of a referral under s 209 (1)(a) of the *Act* is not a change in nature from how the grievance was presented at previous levels. Although the grievance form does not directly list Article 6: No discrimination or harassment, she raised her family status (as related to her return from her first maternity leave) in her grievance statement prior to this referral.

[19] Although she had the option to remain on maternity leave for 18 months, she returned to work after 12 months. Her decision to return to work at the 12-month mark in her maternity leave was informed by the information surrounding COVID-19 at the time, and she only learned that she would be placed on leave without pay (LWOP) indefinitely after she returned to work. She was placed on LWOP only 2 weeks after she returned from maternity leave. She was also full-time teleworking at the time that she was placed on leave without pay, which is distinguishable from *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLRB 47, her vaccination status did not impose an immediate risk to colleagues or clients due to her teleworking agreement.

B. Timeliness

[20] The respondent argues that the grievance was referred to adjudication approximately two years after the deadline to do so expired. It submits that the grievance is untimely and that the Board does not have jurisdiction to hear it.

[21] The applicant acknowledges that the grievance was referred to adjudication late. She argues that the application should be granted, in the interest of fairness.

C. The application

1. For the applicant

[22] The applicant argues that the delay was entirely due to the bargaining agent's transmittal error. She cites *Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1, as the authority to determine whether I

should grant the application, in the interest of fairness. The five *Schenkman* criteria are as follows:

- clear, cogent, and compelling reasons for the delay;
- the length of the delay;
- the due diligence of the applicant;
- balancing the injustice to the applicant against the prejudice to the respondent if the application is granted; and
- the grievance's chance of success.

a. Clear, cogent, and compelling reasons for the delay

[23] The applicant argues that the grievance was presented within the time limit at the first and final levels of the grievance process and that the bargaining agent's mistake of not referring it to adjudication in time is a clear, cogent, and compelling reason for the delay. She argues that she had a genuine belief that her grievance would be referred to adjudication within the time limit and that she relied on that belief to her detriment.

[24] She argues that the national bargaining agent representative left UNDE in early 2023 and was not able to notice the error in transmitting the grievance within the time limit. She also argues that she was advised that once a grievance is sent to the Board the delay is significant. Finally, she argues that she had a child and had been on leave. She followed up when she returned from leave.

[25] She argues that she should not be penalized because of the bargaining agent's mistake. In support, she cites *D'Alessandro v. Treasury Board (Department of Justice)*, 2019 FPSLREB 79 at paras. 19 to 24; *Lessard-Gauvin v. Treasury Board (Canada School of Public Service)*, 2022 FPSLREB 40 at paras. 36 to 46; *Barbe v. Treasury Board (Correctional Service of Canada)*, 2022 FPSLREB 42 at paras. 48 to 50; and *Slusarchuk v. Treasury Board (Correctional Service of Canada)*, 2023 FPSLREB 22 at para. 44.

b. Length of the delay

[26] The applicant argues that the 24-month delay is like the 20-month delay in *Barbe*, in which the application was granted.

c. Due diligence of the applicant

[27] The applicant argues that she was diligent because she signed her grievance and the transmittals within the time limit. She followed up with the bargaining agent in March 2024, while she was on maternity leave, to find out about the status of her grievance.

[28] The applicant also argues that the bargaining agent was diligent because when it became aware of the error, it contacted the respondent to request an extension of time, in March 2024.

d. Balancing the injustice to the applicant against the prejudice to the respondent if the application is granted

[29] The applicant argues that she would be prejudiced if the application is not granted because the grievance is about the respondent's unilateral decision to place her on leave without pay. She argues that the loss of income while on that leave is a significant financial penalty.

[30] She also argues that the respondent would suffer minimal prejudice if the application were granted because there would be minimal witness testimony for it.

e. Chance of success

[31] The applicant argues that the grievance is not frivolous or vexatious and that it is not possible to determine the chance of success of the grievance at this preliminary stage. In support, she cites *Mazzini v. Canada Revenue Agency*, 2024 FPSLRB 105 at para. 39.

2. For the respondent

[32] The respondent argues that the Board should grant an extension-of-time application in the interest of fairness only exceptionally. In support, it cites *Martin v. Treasury Board (Department of Human Resources and Skills Development)*, 2015 PSLRB 39; and *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92.

[33] The respondent argues that in the application, the applicant did not identify any exceptional circumstances that are worth granting an extension of time.

a. Clear, cogent, and compelling reasons for the delay

[34] The respondent argues that the mistake referring the grievance to adjudication is not a clear, cogent, and compelling reason for the delay. It cites *Copp v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2013 PSLRB 33, which states that bargaining agent errors, omissions, or negligence are not clear, cogent, and compelling reasons for a delay.

[35] It also cites *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93, which states that for an application to be granted, there must be a "... clear, cogent and compelling reason for the delay ...". It argues that the applicant did not present sufficient reasons for the delay referring the grievance to adjudication, so the Board should not exercise its discretion to grant the application.

b. Length of the delay

[36] The respondent argues that the grievance was referred to adjudication almost 2 years after the time limit to refer it expired. Close to 24 months is a significant delay.

[37] The respondent argues that this case is not like *Barbe* because there was no confusion about the 40-day deadline, and the applicant could have referred her grievance to adjudication without her bargaining agent's support. In *Barbe*, the grievor required that support.

c. Due diligence of the applicant

[38] The respondent argues that the applicant did not demonstrate that she was diligent. She followed up in early September 2022 about the status of her grievance. The bargaining agent indicated that it would transmit it to the PSAC the next week and that it would be in touch.

[39] The respondent argues that no explanation was provided as to why the local bargaining agent representative did not follow up to confirm that the grievance had been referred to adjudication. It also argues that between September 2022 and March 2024, there was no follow-up, which demonstrates a lack of diligence. There was no explanation as to what happened during that period.

d. Balancing the injustice to the applicant against the prejudice to the respondent if the application is granted

[40] The respondent argues that it is entitled to expect that this matter ended in September 2022, when the time limit to refer the grievance to adjudication elapsed. It argues that it would be unfair and contrary to the principles of good labour relations to grant the application almost two years after the time limit expired. It argues that this factor should not carry much weight.

e. Chance of success

[41] The respondent argues that without hearing evidence, it is difficult to determine the chance of success of this grievance.

IV. Reasons

A. Changing the nature of the grievance

[42] I find that the complainant changed the nature of her grievance when she referred it to adjudication under s. 209(1)(a) of the *Act* and the grievance is not properly before the Board. *Bowden*, para. 37, states that grievances are rarely well-crafted legal documents and to determine the nature of a grievance it is necessary to look at them in the context of the facts, as well as the wording by looking at both the details section and the requested corrective action.

[43] The wording in the grievance states:

THE "POLICY ON COVID-19 VACCINATION FOR EMPLOYEES OF CSE" IS EXCLUSIONARY AND UNFAIR. IT GOES AGAINST BODY AUTONOMY AND THE PUNISHMENT BY CSE TO RESTRICT MY ABILITY TO PERFORM MY DUTIES AND REMOVE MY INCOME INDEFINITELY IS GROSSLY EXORBITANT.

[44] The requested corrective action says: "FULL REINSTATEMENT OF DUTIES, SALARY AND BENEFITS".

[45] On its face, the grievance does not refer to discrimination or the collective agreement. It refers to the policy being "exclusionary", "unfair", going "against body autonomy" and "punishment". The requested corrective action does not refer to discrimination or the collective agreement. It talks about reinstatement of duties, salary and benefits.

[46] I also reviewed the grievance responses at the first and final level of the grievance procedure. Neither response refers to allegations of discrimination or violations of the collective agreement.

[47] Based on the reading of the grievance itself and the context of the facts I cannot find a link to discrimination, or to the collective agreement which means that the grievance referred to adjudication under s. 209(1)(a) of the *Act* is not properly before the Board.

B. Timeliness

[48] Requests for extension of time are made under s. 61 of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; “the *Regulations*”) which state that the Board may grant an extension of time in the interest of fairness. As in this case, the parties often present arguments about these applications based on the *Schenkman* criteria. The criteria are not meant to be a formulaic or applied in a mathematical fashion (see *Parker v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 57 at para. 30). The starting point of my analysis are the *Regulations* and the interest of fairness (see *Barbe*, at paras. 24, 25, and 26).

[49] I read the parties’ submissions. The applicant did not provide clear, cogent, and compelling reasons for the delay, its length is excessive, and there was a lack of diligence on her part. I find that in this case, these factors outweigh the others, so I dismiss the application.

C. Clear, cogent, and compelling reasons for the delay

[50] The grievance was referred to adjudication almost 24 months outside the time limit. I reviewed the email exchange between the local and national bargaining agent representatives about the grievance and the next steps. A question was asked about the next steps, and the answer was that the grievance would be transmitted to the PSAC, and that the national bargaining agent representative would be in touch the next week.

[51] The applicant failed to explain why the local bargaining agent representative did not follow up when they did not hear back from the national bargaining agent representative a week later or why the applicant or the local bargaining agent representative were unable to refer the grievance to adjudication on their own.

[52] The grievance was referred to adjudication under both ss. 209(1)(a) and (b) of the *Act*. The applicant did not need the support of her bargaining agent to refer her grievance to adjudication under s. 209(1)(b) of the *Act*, a disciplinary action resulting in termination, demotion, suspension or financial penalty.

[53] This weighs heavily in the respondent's favour.

D. Length of the delay

[54] The length of the delay is approximately 24 months outside the time limit prescribed in the collective agreement. I agree with the reasoning in *Rinke v. Canadian Food Inspection Agency*, 2005 PSSRB 23, at para. 16, which is that there is no threshold at which a date is deemed reasonable. Given the facts in this case, I find that the delay of 24 months to be unreasonable.

[55] The stage of the grievance process that the delay occurred is also a factor. In this case the delay occurred in the referral to adjudication and not in the transmittal of the grievance in the departmental grievance procedure (see *Van de Ven v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLRB 60).

[56] While it may be in the interest of fairness for the Board to extend the time prescribed to present a grievance in the grievance process and refer the grievance to adjudication, it is also in the interest of fairness for the parties to expect finality when a grievance has not been pursued within the time limit, in particular approximately 24 months after the deadline to refer it to adjudication.

[57] In the case before me both the length of the delay and the stage of the grievance process that it occurred weigh heavily in the respondent's favour.

E. Due diligence of the applicant

[58] I agree with the respondent that the applicant was not diligent. There was no explanation as to why the local bargaining agent representative did not follow up to confirm that the grievance had been referred to adjudication. There was no follow-up between September 2022 and March 2024, which also demonstrates a lack of diligence. I note that the applicant had a child and was on leave starting in July 2023. There was no explanation as to what happened between September 2022 and July 2023. There was also no explanation as to why the local bargaining agent representative did not follow-up for the applicant during the period that she was on maternity leave.

[59] There was also no explanation as to why the grievance was not referred to adjudication when the employer declined the applicant's request for an extension of time on July 25, 2024. I note that the grievance was referred to adjudication on September 3, 2024, which was 27 working days, or 40 calendar days later.

[60] This weighs heavily in the respondent's favour.

F. Balancing the injustice to the applicant against the prejudice to the respondent if the application is granted

[61] I agree with the respondent that it was entitled to expect that this matter ended in September 2022, when the time limit to refer the grievance to adjudication elapsed. However, the applicant has no other recourse if the application is dismissed, and the grievance concerns a loss of pay.

[62] This weighs in the applicant's favour.

G. Chance of success

[63] I agree with the parties that it is premature to assess this factor at this point.

[64] I give this factor no weight.

V. Conclusion

[65] The applicant did not provide a clear, cogent, and compelling reason for the delay, its length is significant, and she did not demonstrate due diligence.

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

(The Order appears on the next page)

VI. Order

[67] The jurisdictional objection concerning the grievance referred under s. 209(1)(a) is allowed.

[68] The objection based on timeliness is allowed.

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

[70] The grievances in Board file nos. 566-13-50626 and 50631 are dismissed.

June 16, 2025.

Brian Russell,
a panel of the Federal Public Sector
Labour Relations and Employment Board