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File: 566-34-51095

Citation: 2025 FPSLREB 83

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

MIRANDA BROCKERVILLE

Applicant

and

CANADA REVENUE AGENCY

Respondent

Indexed as
Brockerville v. Canada Revenue Agency

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: Kalapi Roy

For the Respondent: Nicholas Gualtieri

Decided on the basis of written submissions, filed January 10 and 27 and March 11 and 25, 2025.

REASONS FOR DECISION

I. Application to extend the time limit to file a grievance

[1] This decision is about an application to extend the time limit to file the security-clearance grievance. For the following reasons, I conclude that the grievance was untimely, so the application is denied.

[2] Miranda Brockerville ("the applicant") filed two grievances. She grieved the Canada Revenue Agency's ("the respondent") decisions to terminate her employment for disciplinary reasons ("the termination grievance") and to revoke her security clearance ("the security-clearance grievance").

[3] The respondent filed two objections with the Federal Public Sector Labour Relations and Employment Board ("the Board"). First, the security-clearance grievance was filed outside the time limit provided in the relevant collective agreement. Second, her security clearance revocation is outside the Board's authority because it was not a breach of discipline or misconduct.

[4] In the applicant's response to the objections, she first applies for an extension of time to file her security-clearance grievance under s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"). Second, she argues that Board has the authority to hear it.

[5] I will not deal with the second objection because the application is denied.

[6] 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 allows me to decide the issue without a hearing.

II. Summary of the submissions

[7] The applicant was a taxpayer relief officer classified at the SP-04 group and level. Her employment was terminated on August 28, 2023. On the same day, the respondent revoked her security clearance. She filed a grievance on September 17, 2023, opposing its decision to terminate her employment for disciplinary reasons.

[8] She filed a grievance on February 2, 2024, five months after her security clearance was revoked, opposing the respondent's decision to revoke it. Both grievances were referred to adjudication on November 13, 2024.

III. Summary of the arguments

A. The objection based on timeliness

1. For the respondent

[9] The respondent argues that the security-clearance grievance was filed more than 25 days after it decided to revoke the applicant's security clearance. It submits that the Board is without jurisdiction to hear this grievance because it is untimely.

2. For the applicant

[10] The applicant acknowledges that the security-clearance grievance was filed late. She argues that her application, under s. 61(b) of the *Regulations*, should be granted, in the interest of fairness.

B. The application

1. For the applicant

[11] The applicant argues that the delay is attributable solely to the bargaining agent, the Public Service Alliance of Canada (PSAC). 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. The five *Schenkman* criteria are as follow:

- 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

[12] The applicant argues that the bargaining agent's negligence is the cause of the delay and that it is a clear, cogent, and compelling reason for it. She explains that the national office of the PSAC's component (the Union of Taxation Employees) ("the

national office") tended to file a termination grievance separately from one about a security clearance revocation.

[13] When it prepared for the final-level grievance presentation of both grievances, the national office notified the local that the security-clearance grievance was missing from the file.

[14] On January 22, 2024, the national office instructed the local to arrange to file a grievance, after it made a series of prompts. The security-clearance grievance was filed with the respondent on February 5, 2024, 10 working days after the national office instructed the local to arrange it.

[15] The applicant argues that the Board has recognized a bargaining agent's error as a clear, cogent, and compelling reason for a delay. 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; *Slusarchuk v. Treasury Board (Correctional Service of Canada)*, 2023 FPSLREB 22 at para. 44; and *Ho v. Canada Revenue Agency*, 2025 FPSLREB 6.

[16] Finally, she argues that the Board has extended the time limit in a grievance process when a bargaining agent caused a delay.

b. Length of the delay

[17] The applicant argues that the security-clearance grievance was filed approximately 4 months late. Extension-of-time applications have been granted for delays of 4 months (in *Thompson v. Treasury Board (Canada Border Services Agency)*, 2007 PSLRB 59, and *Lessard-Gauvin*), 6 months (in *Richard v. Canada Revenue Agency*, 2005 PSLRB 180), 7 months (in *Prior v. Canada Revenue Agency*, 2014 PSLRB 96), 19 months (in *International Brotherhood of Electrical Workers, Local 2228 v. Treasury Board*, 2013 PSLRB 144), and over 20 months (in *Barbe*).

[18] She argues that the Board has granted extension-of-time applications in cases in which a bargaining agent's delay exceeded four months.

c. Due diligence of the applicant

[19] The applicant argues that she was diligent throughout the process and that she relied on the bargaining agent to file her grievance. She learned that a grievance should have been filed to oppose her security-clearance revocation when the bargaining agent contacted her. That was five months after it was revoked.

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

[20] The applicant argues that the respondent did not explain how it would be prejudiced were the application granted. It did not explain how a four-month delay filing the security-clearance grievance would alter its case in defence of the revocation of her security clearance.

[21] She contends that the prejudice to her would be significant because she would have no other way to challenge the respondent's decision.

[22] Alternatively, she argues that if the Board grants the application and finds the revocation unjustified, she would be provided with potential re-entry to public sector employment. Otherwise, she would be barred from re-entering it for 10 years.

e. Chance of success

[23] She argues that the security-clearance grievance is neither vexatious nor frivolous and that it is difficult to assess its chance of success at this stage. She cites *Van de Ven v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLREB 60 at para. 74, and the cases cited in it, to support her position.

f. Conclusion

[24] The applicant argues that the *Schenkman* factors are not fixed and are not necessarily equally weighted. Fairness is the prevailing consideration when assessing an extension-of-time application. To support her position, she cites *Barbe*, at para. 39; *Lewis v. Deputy Head (Correctional Service of Canada)*, 2023 FPSLREB 27 at para. 59; *Van de Ven*, at paras. 73 and 74; and *Noor v. Treasury Board (Department of Indigenous Services)*, 2023 FPSLREB 86 at paras. 44 to 48.

2. For the respondent

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

[25] The respondent argues that the bargaining agent's error is not a clear, cogent, and compelling reason for the delay. It also argues that the applicant did not request that the time limit be extended during its grievance process.

b. Length of the delay

[26] The respondent argues that the length of the delay cannot be considered in isolation but that it must be considered along with the reason for the delay, to determine whether it is unreasonable.

[27] It argues that in this case, the length of the delay is significant, given the lack of a clear, cogent, and compelling reason for it.

[28] It cites *Bowden v. Treasury Board (Canada Border Services Agency)*, 2021 FPSLREB 93, which stated that the parties should respect a prescribed time limit and that a limit should be extended only in exceptional circumstances.

c. Due diligence of the applicant

[29] The respondent argues that the applicant was not diligent because there is no documentation to demonstrate the communications between her and the bargaining agent about filing a grievance against the security-clearance revocation. Also, she worked for the respondent from 2017, so she would have been familiar enough with her management team and colleagues to ask about filing a grievance and the relevant collective agreement's provisions.

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

[30] The respondent argues that granting the application without clear, cogent, and compelling reason would be prejudicial to it.

[31] The respondent claims that it would suffer prejudice were the application granted without clear, cogent, and compelling reason because it would pave the way for granting other similar applications and would undermine the provisions of the relevant collective agreement.

e. Chance of success

[32] The respondent argues that little weight should be given to this factor and cites *Bowden* to support its position.

IV. Reasons

A. The application is denied

[33] Requests for extension of time are made under s. 61 of 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 concern for fairness (see *Barbe* at paras. 24 to 26).

[34] In this case, I have put more weight on the clear, cogent, and compelling reasons, the length of the delay, and the due diligence of the applicant.

1. Clear, cogent, and compelling reasons

[35] I conclude that the applicant did not provide clear, cogent, and compelling reasons for the delay. I read the cases that she cited, and they can be distinguished, as set out in the following paragraphs.

[36] In *D'Alessandro*, the grievor asked his bargaining agent several times to file a grievance on his behalf but it failed to. He made a duty-of-fair-representation complaint against it. It is only after filing the complaint that the bargaining agent filed 4 grievances on his behalf.

[37] The Board allowed his complaint. It found the bargaining agent violated its duty to represent him fairly because it did not deal with his files. The bargaining agent acted through representatives at different levels of its organization, ranging from the local level to its national president. Its duty of fair representation violation was related to members of the bargaining agent's executive.

[38] In this case, the applicant blames the bargaining agent local for not filing the security-clearance grievance in a timely manner. No explanation was provided to clarify why that the national office could not have filed a grievance instead of the local.

[39] In *Lessard-Gauvin*, the grievor and the bargaining agent had a misunderstanding about who was to file the grievance with the employer. The grievor emailed a grievance to the bargaining agent, challenging his termination. Its representative printed the documents without reading the contents of the email chain and failed to notice that the employer had not signed the grievance. At paragraph 46, the Board stated, "On its own, this error would not justify the Board allowing the application for an extension [of time]."

[40] In this case, as in *Lessard-Gauvin*, the local representative's error or negligence alone does not justify allowing the application.

[41] In *Barbe*, the bargaining agent processed files in a manner characterized by complete confusion. The applicants always believed that their grievances were referred to adjudication, and they trusted the bargaining agent. The decision stated that deadlines exist for a good reason, so a good reason is necessary to waive them. It also stated that in some cases, fairness outweighs a clear explanation.

[42] In this case, the applicant's explanation is insufficient to waive the applicable deadline.

[43] In *Slusarchuk*, the bargaining agent caused the delay and argued that that should not have been held against the grievor. The delay was due to a combination of the inability, absence, or negligence of one of its grievance officers. The grievance officer was overwhelmed by his duties, was in the process of resigning from his role, and was mostly absent from work during the period that the grievance should have been filed. There is no such argument in this case.

[44] In *Ho*, the applicant did not provide clear, cogent, and compelling reason for the delay. That weighed in the respondent's favour, but other factors weighed in the applicant's favour.

[45] In this application, the information provided is not a sufficiently clear, cogent, and compelling reason. The applicant explained that the bargaining agent tended to file two grievances and that when it prepared for the final-level grievance presentation for both grievances, its national office notified the local that the security-clearance grievance was missing from the file. The national office instructed it to arrange to file a grievance, after a series of prompts. It filed the grievance 10 working days later.

[46] The applicant failed to explain what prevented the national office from filing a grievance instead of the local; why there was a 10-working-day delay to file the security-clearance grievance after the national office notified the local; why the local did not act after the national office's first prompt or why she did not file one grievance about both the termination and the revocation.

[47] There is no argument in her submissions addressing that the bargaining agent lacked knowledge or experience about the security-clearance grievance; nor was there any allegations that the local office was overwhelmed.

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

2. Length of the delay

[49] I conclude that the length of the delay is not reasonable, given the lack of a clear, cogent, and compelling reason for it. Another grievance was filed on the same events within the time limit.

[50] This factor weighs in the respondent's favour.

3. Due diligence of the applicant

[51] There is no argument supporting that the applicant was diligent. She provided no information to demonstrate that she followed up with the bargaining agent to determine the status of the security-clearance grievance.

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

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

[53] I agree with the applicant that the prejudice to her is greater. I also agree with the respondent that granting the application would undermine the relevant collective agreement's provisions.

[54] However, I disagree with the respondent that granting the application would pave the way for granting other applications. Each one is evaluated based on the facts before the Board.

[55] This factor weighs in the applicant's favour.

5. Chance of success

[56] I agree with the applicant that it is difficult to assess this factor at this stage, so I give it no weight.

V. Conclusion

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

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

(The Order appears on the next page)

VI. Order

[59] The objection based on timeliness is allowed.

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

July 7, 2025.

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