

Date: 20250725

File: 566-34-48819

Citation: 2025 FPSLREB 91

*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

BHANU CHOPRA

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as

Chopra v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Todd Ferguson, Professional Institute of the Public Service of Canada

For the Employer: Nick Gualtieri, Labour Relations

Decided on the basis of written submissions,
filed March 14 and April 3, 2024.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] I was assigned to this file on or about February 8, 2024. It arose from a complaint that Bhanu Chopra (“the grievor”) made in which he alleged that the Canada Revenue Agency (“the employer”) had failed to provide him a harassment-free workplace.

[2] I reviewed the materials in the file of the Federal Public Sector Labour Relations and Employment Board (“the Board”), in particular the referral to adjudication, the employer’s correspondence of January 10 and 23, 2024, and the correspondence of January 19 and 29, 2024, of the Professional Institute of the Public Service of Canada (“the bargaining agent”).

[3] Based on that correspondence, it appeared to me that the grievor filed these two grievances, involving outstanding workplace-harassment allegations:

- 1) the grievance numbered C-01438-V1V9M1, which currently is being held in abeyance at the third level of the grievance process (“the first grievance”); and
- 2) the grievance in this decision C-08098-Z1D9J8, which is currently before the Board and bears Board file no. 566-34-48819 (“the second grievance”).

[4] The employer objected to the Board’s jurisdiction to hear the second grievance on these two basic grounds:

- 1) the grievance about the alleged failure to provide the grievor a harassment-free workplace was filed more than 25 days after he first became aware of the alleged harassment; and
- 2). in any event, the allegations in the second grievance were already set out in the first grievance, which has been held in abeyance and remains live

[5] The bargaining agent’s position was that both grievances are different in nature. The first relates to the harassment that the grievor alleged that he suffered in the workplace, while the second relates to the employer’s reaction to the first one.

[6] After I considered the employer’s objection and the bargaining agent’s response, it appeared to me that the issue of whether the second grievance is out of time involves factual issues that do not depend on credibility or questions of law or interpretation with respect to whether the facts fit within the meaning of clause 34.11 of the relevant collective agreement, which is between the employer and the bargaining

agent for the Audit, Financial and Scientific (AFS) group (expiry date December 21, 2022; “the collective agreement”).

[7] With that in mind, I have decided to exercise my authority under s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) to proceed by written submissions and material.

II. Directions to the parties

[8] Accordingly, I directed the parties as follows:

1) The employer was to provide the following:

...

A. A copy of the First Grievance together with any of its level responses to that grievance;

B. A copy of the Second Grievance together with any of its level responses to that grievance; and

C. Its submissions as to why it says the Second Grievance is out of time and hence the Board is without jurisdiction to hear it. In making these submissions the Employer may rely upon or supplement the submission already made and referenced above.

...

2) After the employer’s submissions were received, the bargaining agent was to provide the following:

...

A. Any additional documents not already set out above in support of its position that the Second Grievance is not out of time, and

B. Its submissions as to why it says the Second Grievance is not out of time. In making these submissions the Employer may rely upon or supplement the submission already made and referenced above.

...

3) The Employer was then to provide whatever reply it thought necessary.

[9] When they made their submissions, the parties were asked to consider not only the timeliness issue but also whether the facts and issues raised in the second grievance fell within or were an extension of those raised in the first grievance.

[10] If for any reason the parties could not meet the dates set out, they were provided with the right to apply to the Board for an extension.

[11] Several extensions of time were granted to the parties for the additional submissions. In the end, the Board received the employer's on March 14, 2024, and the bargaining agent's on April 3, 2024.

III. Summary of the grievances

A. The first grievance

The first grievance is dated March 10, 2020. In it, the grievor grieved the following "... the actions of Ms. Delio culminating in the discussion and exchange of emails of February 4th 2020 and from February 5th to March 10 2020 constitute harassment as defined in the identifying Discrimination and Harassment Policy, or a branch [sic] of any Article of the Collective Agreement ... this is a continuing grievance.

B. The second grievance

[12] The second grievance is dated October 27, 2022. In it, the grievor grieved the "... employer's failure to provide [him] with a harassment-free workplace ...", along with the following:

... [the] employer's failure to provide me with a harassment-free workplace; I further grieve my employer's failure to address my harassment in good faith or provide a harassment investigation process that is procedurally [sic] fair and non-discriminatory. The employer has violated Articles 5, 24 and 42 of the Collective Agreement; Sections 124 and 125 of Part II of the Canada Labour Code; Section 14 of the Canadian Human Rights Act; along with any other Article of the Collective Agreement or any other legislation that may apply.

IV. The facts

[13] I took the following facts from the bargaining agent's submission of April 3, 2024. In doing so, I am not to be taken as agreeing with all the allegations in it; for example, the allegation in its paragraph 9 that the investigation report was "ridden [sic] with errors and omissions" is to be taken simply as the grievor's allegation, not as a fact. The submission reads in part as follows:

...

1. Bhanu Chopra ("the Grievor") is a Manager of Finance, with over twenty years of service with the Canada Revenue Agency ("the Employer").

2. The Grievor alleges that he was subjected to a series of harassing incidents by his manager, Ms. Delio (“the Respondent”) commencing in April 2019.

3. The Grievor filed grievance C-01438-V1V9M1, also known as G20-3441-01438 (the “First Grievance”) on March 10, 2020 because of the harassment he alleges. That grievance read:

I grieve that the actions of Ms. Delio (“the respondent”) culminating in the discussion and exchange of emails of February 4th, 2020, and from February 5th to March 10, 2020, constitute harassment as defined in the identifying Discrimination and Harassment Policy, or a branch of any Article of the Collective Agreement, Policy, Legislation, Regulation or Code that I may advise and apply to the circumstances. For greater clarity, this is a continuing grievance.

4. In September 2021, the Employer responded to the Grievor’s harassment allegations by telling the Grievor they would investigate his allegations.

5. On September 29, 2021, the parties agreed to put the First Grievance in abeyance to allow the Employer time to take action to protect the Grievor from further harassment and to fully investigate his allegations of harassment.

6. The Employer hired Audrey Devlin (“the Investigator”) to investigate the Grievor’s allegations of harassment.

7. The Investigator did not interview the Grievor concerning his allegations of harassment until January 26, 2022. A subsequent interview of the Grievor was conducted by the Investigator on February 7, 2022.

8. There was little news or updates concerning the investigation for several months. Then, in June 2022, the Investigator and the Grievor had a disagreement concerning documentation. The Investigator contacted Nairra Tariq, the union representative supporting the Grievor at that time, to complain about the Grievor. How the Investigator conducted herself regarding this incident concerned Ms. Tariq. It appeared to her that the Investigator was interacting with the Grievor in a racially-biased manner.

9. In late June/early July 2022, the Investigator released her preliminary report. The report was riddled with errors and omissions, causing further concern for Ms. Tariq. Ms. Tariq contacted the employer to discuss her concerns with them and to request that the Employer halt the investigation and replace the Investigator.

10. On September 27, 2022, the Employer responded to Ms. Tariq’s request, telling her that they would take no action to address her concerns and that the investigation would continue under the current Investigator.

11. On October 22, 2022, the Grievor filed a second grievance (“the Second Grievance”). This grievance read:

I grieve my employer’s failure to provide me with a harassment-free workplace; I further grieve my employer’s failure to address my harassment in good faith or provide a harassment investigation process that is procedurally fair and non-discriminatory. The employer has violated Articles 5, 24 and 42 of the Collective Agreement; Sections 124 and 125 of Part II of the Canada Labour Code; Section 14 of the Canadian Human Rights Act; along with any other Article of the Collective Agreement or any other legislation that may apply.

12. On February 13, 2023, the Union asked for the Second Grievance to be heard at the third level of the grievance process and for the First Grievance to remain in abeyance. That same day, the Employer accepted the request.

13. The Employer heard the Second Grievance the third level of the grievance process on April 11, 2023. The Employer denied the grievance on the basis of timeliness and merits.

14. The Employer heard the Second Grievance at the final level of the grievance process on November 17, 2023. The Employer denied the grievance on the basis of timeliness and merits on December 13, 2023.

15. The Union referred the Second Grievance to adjudication before the Board on January 4, 2024.

...

[Sic throughout]

A. Additional facts that the bargaining agent did not contest

[14] In its reply, the bargaining agent did not contest the following statements in the employer’s submissions dated March 14, 2024. They deal with the history of the first grievance after its filing and state in part as follows:

...

The Grievor did not provide particulars or otherwise substantiate their allegations at that time and the Grievor and respondent agreed to engage in a mediated discussion through Informal Conflict Resolution (ICR). However, a few days later, CRA employees were sent home due to the COVID-19 pandemic, and all grievances were placed in abeyance. The ICR process was also delayed as the Employer made arrangements to conduct ICR virtually.

In February 2021, the Union requested that the matter proceed to a grievance hearing. The ICR process was skipped, and the

Employer heard the First Grievance at the first level of the grievance process.

On April 30, 2021, after receipt of the Grievor's list of allegations and documents to substantiate them, the Employer separated the Grievor and the respondent. On the same day, the Employer proposed the First Grievance be placed in abeyance pending the screening of the allegations, to which the Union agreed.

On August 5, 2021, the Union asked that the First Grievance be taken out of abeyance, and heard directly at the third level, since they had not yet received a decision on the screening of the allegations.

On August 9, 2021, the Employer informed the Union that their request was granted, and that a third level hearing would be forthcoming.

On September 20, 2021, the Grievor was informed that 13 of their 19 allegations were timely and met the criteria for an investigation. As such, an investigation was formally launched into these 13 allegations.

On September 29, 2021, the Union once again asked that the First Grievance be placed in abeyance pending the conclusion of the investigation. The Employer agreed.

On September 27, 2022, the Grievor filed grievance C-08098-Z1D9J8, bearing Board file number 566-34-48819 (the "Second Grievance"). It reads as follows:

I grieve my employer's failure to provide me with a harassment-free workplace; I further grieve my employer's failure to address my harassment in good faith or provide a harassment investigation process that is procedurally fair and non-discriminatory. The employer has violated Articles 5, 24 and 42 of the Collective Agreement; Sections 124 and 125 of Part II of the Canada Labour Code; Section 14 of the Canadian Human Rights Act; along with any other Article of the Collective Agreement or any other legislation that may apply.

In November 2022, an impartial external investigator concluded their investigation of the Grievor's allegations underpinning the First Grievance. They concluded that none of the Grievor's 13 allegations of harassment were founded.

On February 13, 2023, the Union asked for the Second Grievance be heard at the third level of the grievance process and for the First Grievance to remain in abeyance. That same day, the Employer accepted the request.

The Employer heard the Second Grievance the third level of the grievance process on April 11, 2023. The Employer denied the grievance on the basis of timeliness and merits.

The Employer heard the Second Grievance at the final level of the grievance process on November 17, 2023. The Employer denied

the grievance on the basis of timeliness and merits on December 13, 2023.

...

[Sic throughout]

B. The first grievance's status

[15] In its reply, the bargaining agent did not contest the employer's submission of March 14, 2024, which describes the first grievance's status as follows:

...

The First Grievance, which alleges the Grievor was harassed by the respondent, has been in abeyance at the Union's request since September 29, 2021. To date, the Union has not requested that it be taken out of abeyance and heard at the third level of the grievance process. As such, the Employer has not yet had the opportunity to hear the Grievor's arguments on the First Grievance and provide its reply to the allegations.

...

C. The employer's objections to the second grievance

[16] The employer made the following two objections to the second grievance:

- 1) it is untimely, because it was filed more than 25 days after the date on which the grievor first became aware of the action or circumstances that gave rise to it; and
- 2) the Board is without jurisdiction to hear it because the allegation that the employer failed to provide a harassment-free workplace is already before the employer as part of the first grievance. Since the first grievance is in abeyance and has not proceeded to the final level of the grievance process, it falls outside s. 209(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2).

D. The bargaining agent's position on the timeliness objection

[17] The bargaining agent submitted that the action or circumstances that gave rise to the second grievance related to the employer's refusal to replace the investigator it had assigned to investigate the allegations in the first grievance. That request was made on September 27, 2022, meaning that the deadline to file a grievance was November 3, 2022. Hence, the second grievance was filed in time.

E. The bargaining agent's position on the jurisdiction objection

[18] In its January 29, 2024, response to the employer's objections to the second grievance, the bargaining agent characterized the two grievances as follows: "That initial grievance concerns the harassing incidents the Complainant experienced in the workplace; the grievance at-hand concerns the Employer's unreasonably delayed, incompetent, and biased response to those harassment allegations."

[19] It elaborated on that distinction in its April 2, 2024, submissions as follows:

...

22. The allegations contained in the Second Grievance are materially different from those contained in the First Grievance. Where the First Grievance is concerned with the actions of Ms. Delilo [sic] that the Grievor has characterized as harassment, the Second Grievance is concerned with the employer's failure to properly address workplace harassment once alerted to the problem by the Grievor.

23. The events giving rise to the Second Grievance had not yet and could not have occurred when the First Grievance was filed and therefore could not have been included in the matters concerning the First Grievance.

24. The Second Grievance, file 566-34-48819, is limited to the Grievor's allegations that the Employer failed to respond to his harassment allegations in a timely, effective, or fair manner. These allegations include arguments that the investigation process was procedurally unfair and discriminatory. Because these allegations are materially different from the allegation described in the First Grievance, the Board has jurisdiction over the Second Grievance.

25. Were this not the case, employees would be limited only to grieving initial workplace harassment and would have no recourse should their employer respond to allegations of harassment in an inept or unfair manner.

26. The Board has jurisdiction over the allegation contained in the Second Grievance that the Employer failed to provide a harassment-free workplace.

...

V. Analysis and decision

[20] Clause 34.11 of the collective agreement provides as follows:

34.11 *An employee may present a grievance to the first (1st) level of*

34.11 *Au premier (1er) palier de la procédure, l'employé-e peut*

the procedure in the manner prescribed in clause 34.06, not later than the twenty-fifth (25th) day after the date on which he is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to the grievance.

présenter un grief de la manière prescrite au paragraphe 34.06 au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il ou elle est notifié, oralement ou par écrit, ou prend connaissance, pour la première fois, de l'action ou des circonstances donnant lieu au grief.

[21] As already noted, the bargaining agent argued that the second grievance can be distinguished from the first grievance because it relates to separate and distinct actions or circumstances. And because they are separate and distinct, the second grievance is timely, and the Board has jurisdiction to hear it because it received a final-level response.

[22] I was not persuaded by the bargaining agent's submissions on this point.

[23] What are the actions or circumstances that the grievor alleged underlie the second grievance? For convenience, I will repeat the second grievance:

I grieve my employer's failure to provide me with a harassment-free workplace; I further grieve my employer's failure to address my harassment in good faith or provide a harassment investigation process that is procedurally [sic] fair and non-discriminatory. The employer has violated Articles 5, 24 and 42 of the Collective Agreement; Sections 124 and 125 of Part II of the Canada Labour Code; Section 14 of the Canadian Human Rights Act; along with any other Article of the Collective Agreement or any other legislation that may apply.

[24] Here is the corrective action that the grievor seeks:

- the immediate stoppage of the current flawed employer investigation into the Grievor's current harassment complaint;*
- the immediate commission of a new investigation into the Grievor's harassment complaint, to be performed by a competent and unbiased investigator;*
- that the employer take immediate measures to ensure the Grievor is not subjected to further harassment, discrimination, or reprisals;*
- full reimbursement for all lost wages and benefits suffered as a result of the employer's failure to provide a harassment-free workplace or to investigate the Grievor's complaints of discrimination and harassment in good faith or a timely manner;*
- appropriate damages for the pain and suffering inflicted on the Grievor by the employer's actions;*

- any other action required to make the Grievor whole.

[25] First, and to state the obvious, the allegations set out in the second grievance include the same one that the grievor has suffered or is suffering harassment in the workplace that the employer has failed to correct. The first grievance alleges that the harassment in question is continuing. The second grievance repeats the workplace harassment allegation.

[26] Second, the second grievance's focus on the employer's investigator and the report is not a complaint about an event that is separate and distinct from the first grievance. The second grievance concerns a link in a chain of events that started with the first grievance — a chain that has yet to be completed because the grievor has repeatedly asked for it to be placed in abeyance. The second grievance cannot be understood outside that context and so cannot be said to be separate and distinct.

[27] Perhaps the easiest way to understand this point is to ask what would have happened had the grievor not requested — and been granted — the abeyance for the first grievance. Had no abeyance been granted, the grievance would have proceeded to the final level of the grievance process. At that point, the employer would have had the investigation's results before it. It would have had the grievor's objections to that investigation and the resulting report. Based on that information and those submissions, the employer would have made its final-level response. It would have either allowed the grievance, in whole or in part, or denied it. If the employer denied the grievance, the grievor would have had the right to take his objections — including any and all relating to the merits of the investigation and the report — to adjudication before the Board.

[28] In short, what the grievor complains of in the second grievance — the alleged defects in the investigation and its report — would form the basis of his complaints in any adjudication of the final-level response to the first grievance. The two are not separate and distinct — they are two parts of a whole.

[29] Third, and flowing from the second, the complaint about the investigation and its report is about a possible foundation of a decision — yet to be made — by the employer as to the first grievance's merits. The complaint is about how the employer went about investigating — or handling — the first grievance. But until the employer makes its final-level response, the Board lacks jurisdiction to consider whether the

investigation was defective in some way. Once that response is delivered — and if the grievor refers the grievance to adjudication — the Board will have the jurisdiction to consider whether the investigator’s report — or any employer decision based on it — breached the employer’s obligations under the collective agreement.

[30] All this suggests that the second grievance is not just a rework of the first grievance; it also suggests an attempt to short-circuit or block the first grievance before it is completed by calling into question the steps that the employer took to investigate — and reach a conclusion about — the grievor’s workplace-harassment complaints. That in turn represents an abuse of the grievance and adjudication processes.

[31] The fact that the grievor has repeatedly asked that the first grievance be held in abeyance offers some support to that conclusion on the harassment allegations. But the proper place and time to raise the allegations that he did is at the end of the first grievance, after the employer issues its final-level response. If the grievor disagrees with that response for any reason — including that it was based on a discriminatory investigation — then he can have the Board determine that objection through a reference to adjudication.

[32] To conclude this part of the analysis, I am satisfied that the second grievance merely reworks and extends the facts or circumstances that gave rise to the first grievance and the employer’s response to it. It has no existence independent of the first grievance. Hence, the Board has no jurisdiction to consider the grievor’s complaints about how the employer has processed the first grievance until it renders its final-level response.

[33] The timeliness objection becomes moot, given my decision that the second grievance is an extension of the actions or circumstances involved in or arising out of the first grievance. Had it been necessary to decide the issue, I would have found that the grievor first became aware of the acts or circumstances that gave rise to the grievance in June or early July of 2022, when the bargaining agent asked the employer to halt the investigation and replace the investigator on the grounds that the preliminary report was “ridden [sic] with errors and omissions” and racial bias. Accordingly, the second grievance was filed well outside the 25 days from that date.

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

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

(The Order appears on the next page)

VI. Order

[35] The Board is without jurisdiction to hear or determine the grievance in Board file no. 566-34-48819. The file is closed.

July 25, 2025.

**Augustus Richardson,
a panel of the Federal Public Sector
Labour Relations and Employment Board**