Date: 20250821

File: 566-02-49423

Citation: 2025 FPSLREB 97

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

RAPHAËL AGBOTON

Grievor

and

TREASURY BOARD (Statistics Canada)

Employer

Indexed as
Agboton v. Treasury Board (Statistics Canada)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Himself

For the Employer: Brigitte Labelle, analyst

Decided on the basis of written submissions, filed August 30 and October 4, 2024, and January 17 and 20, 2025.
[FPSLREB Translation]

I. Individual grievance referred to adjudication

[1] Raphaël Agboton (“the grievor”) filed a grievance on December 13, 2023, after receiving information from an access-to-information request. In his grievance, he seeks reimbursement for leave he took on June 20, 21, and 24, 2019, and for moral damages for the harm that he suffered.

[2] The grievance was referred to adjudication on March 26, 2024.

[3] After that, the grievor referred several other grievances to adjudication, including against his suspensions and termination. However, this decision deals only with the grievance in Board file no. 566-02-49423, which contests the unauthorized leave.

[4] After it received the Board’s letter on March 28, 2024, about the grievance’s referral to adjudication, the employer raised an objection on April 29, 2024, contesting the Board’s jurisdiction to hear the grievance under s. 209 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *Act*").

[5] The employer noted that the grievance was filed four years after the time limit expired that is set out in clause 33.12 of the Computer Systems collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada, which expired on December 21, 2021.

[6] Following the Board’s directions, the parties were given the opportunity to make additional submissions on the preliminary objection.

[7] For the following reasons, I allow the employer’s preliminary objection. The grievance is untimely. The Board has no jurisdiction to hear it.

II. The employer’s written submissions

[8] The employer objected to the Board’s jurisdiction to hear the three grievances. However, this decision deals only with the grievance mentioned earlier. The Board dealt with the other two grievances in a letter decision.

[9] In its additional submissions, the employer notes that the objection was raised at all levels of the grievance process.

[10] The grievance was filed on December 13, 2023. The grievor sought corrective measures for sick leave taken on June 20 and 21, 2019, and annual leave taken on June 24, 2019, more than four years before the grievance was filed.

[11] In addition, the employer notes that the issue of unauthorized leave has already been addressed in another grievance that the grievor did not refer to adjudication and that it considers that the merits of this grievance have already been considered.

III. The grievor's written submissions

[12] The grievor submitted four emails with attachments, which included several employer responses to grievances that are not before me, four requests submitted under the *Privacy Act* (R.S.C., 1985, c. P-21), documents that included descriptions of events and facts, and documents about the corrective measures.

[13] As for the grievance before me, the grievor submits that it is not untimely.

[14] He notes that through his second access-to-information request, made in February 2021, he discovered new facts about a director's and a human resources advisor's interference with his leave requests' processing in 2019.

[15] The grievor alleges that the grievance involves facts that he did not previously know of. Thus, he argues that since **new facts** have been discovered, the case must be reviewed, in accordance with the practice in the legal milieu.

[16] He notes that his grievance was filed after receiving "[translation] irrefutable and damning facts" and cites several documents. None of the cited documents was provided that refers to new facts.

[17] He then refers to several events that occurred after his grievance was filed and after his leave was converted to unauthorized leave without pay in July 2019.

[18] The grievor argues that his grievance extends to all the "[translation] repressive measures" taken against him and refers to suspensions and his termination, which occurred after the grievance was filed.

IV. The employer's reply

[19] The employer maintains that the grievance is untimely.

[20] The employer submits that the grievor made his access-to-information request more than a year-and-a-half after the decision was made not to authorize his leave requests in June 2019.

[21] Although the grievor made no request for an extension of time, the employer applied the *Schenkman* criteria (*Schenkman v. Treasury Board (Public Works and Government Services Canada)*, 2004 PSSRB 1).

[22] The employer notes that the grievor did not provide clear, cogent, and compelling reasons to justify a four-year delay. It refers to *Grouchy v. Deputy Head (Department of Fisheries and Oceans)*, 2009 PSLRB 92 at para. 46.

[23] Furthermore, the employer argues that the matter has already been the subject of a grievance that was not referred to adjudication.

[24] The delay is four years, which is considerable.

[25] The employer argues that it would be inappropriate to grant an extension of time after such a delay, which the grievor justifies as the time necessary to take note of the documents that he received through his access-to-information requests.

[26] It would be against the *Act*'s objectives to grant an extension of time by minimizing the grievor's responsibility to file his grievance within the deadline and in accordance with the collective agreement. It would undermine the employer's expectations of finality in labour relations situations.

[27] In addition, the grievor did not demonstrate due diligence because he raised concerns about the employer's position only after reviewing the documents received from his requests for access to personal information, which were also submitted beyond the time limit set out in the collective agreement.

V. Reasons

[28] The grievor referred a grievance under s. 209(1) of the *Act* about a claim for leave requests in June 2019, all of which were denied in July 2019.

[29] The grievor is not represented by his bargaining agent. He submits that his leave requests' denials constituted a reprehensible action.

[30] In addition, he submits that he discovered new facts on November 29, 2023, from several access-to-information requests, and that he then filed his grievance on December 13, 2023. Thus, he argues that he is within the 25-day time limit set out in the collective agreement.

[31] The grievor did not submit any request for an extension of time under s. 61(b) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79; "the *Regulations*"), which allows the Board to extend a time limit in the interest of fairness and at a party's request.

[32] Thus, this analysis is limited to determining whether the grievance was filed outside the time limit.

[33] In effect, the grievor asks that the Board start counting from the time he claims that he discovered the new facts, namely, November 29, 2023.

[34] I cannot accept the grievor's arguments that this grievance was filed within the prescribed time limit.

[35] Clause 33.12 of the collective agreement states that a grievor must present a grievance within 25 days. The applicable provision reads as follows:

> ***33.12*** *A grievor may present a grievance to the first step of the procedure in the manner prescribed in clause 33.06,* ***not later than the twenty-fifth (25th) day after the date on which the grievor is notified*** *or on which the grievor first becomes aware of the action or circumstances giving rise to the grievance ….*
>
> ***33.12*** *L'auteur du grief peut présenter un grief au premier palier de la procédure de la manière prescrite au paragraphe 33.06,* ***au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle l'auteur du grief est informé*** *ou devient conscient de l'action ou des circonstances donnant lieu au grief* […]
>
> [Emphasis added]

[36] There is no provision in the collective agreement that deals with time limits in the event that new facts are discovered.

[37] In addition, it is not a request to review a Board decision or order, as provided in s. 43(1) of Part I of the *Act*.

[38] This grievance is about the leave requests that the employer denied in 2019 and for which the grievor seeks reimbursement.

[39] The grievor does not deny the fact that in 2019, he was aware that the leave requests mentioned in the grievance were denied.

[40] Since the grievor became aware in 2019 that that his leave requests were denied, the Board finds that he was aware of the action that gave rise to this grievance in 2019, despite the new facts that he claims to have received on November 29, 2023.

[41] Thus, the grievance was clearly filed more than **four years** late.

[42] Accordingly, the Board has no jurisdiction under s. 209 of the *Act* to deal with the grievance.

[43] Furthermore, even had the grievor applied for an extension of time under s. 61(b) of the *Regulations* by citing new facts that he could not have discovered earlier, my decision would be the same.

[44] I would have applied the *Schenkman* factors and accepted the employer's argument that the grievor did not present any clear, cogent, or compelling reason to explain the four-year delay filing his grievance.

[45] In fact, the access-to-information request, which, according to the grievor, gave rise to "[translation] new facts", was made more than a year after the leave requests were denied. He does not explain the reason for that delay.

[46] Instead, the grievor asks to ignore the time limit set out in clause 33.12 of the collective agreement.

[47] The Board cannot ignore the strict 25-day time limit set out in the collective agreement for filing his grievance. Thus, it has no jurisdiction to hear this grievance.

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

(The Order appears on the next page)

VI. Order

[49] The employer's preliminary objection is allowed.

[50] The grievance is denied.

August 21, 2025.

FPSLREB Translation

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