**Date:** 20250924

**Files:** 566-02-49415, 52285, 52509, and 52543

**Citation: 2025 FPSLREB 122**

*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

**TAREK SALEM**

Grievor

and

**DEPUTY HEAD (Department of Health)**

Respondent

Indexed as
*Salem v. Deputy Head (Department of Health)*

In the matter of individual grievances referred to adjudication

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

**For the Grievor:** Himself

**For the Respondent:** Jodi Brass

Decided on the basis of written submissions, filed June 12, 24, 27, and 30, July 2, 9, 11, and 31, and August 11, 2025.

**REASONS FOR DECISION**

## I. Overview

[1] This decision is about four files involving Dr. Tarek Salem ("the grievor") and Health Canada. Health Canada suspended the grievor for one day on March 28, 2023, suspended him again for three days on May 30, 2023, and then terminated his employment for unsatisfactory performance on August 16, 2023. The grievor grieved all three decisions and has referred those grievances to adjudication.

[2] Issues have arisen in the four adjudication files that the grievor has opened about those suspensions and his termination. These reasons address those issues. I will deal with the issue that arose in the two suspension grievances and then turn to the termination cases.

## II. Suspension grievances (Board file nos. 566-02-52509 and 52543)

[3] As I stated earlier, Health Canada issued a one-day and then a three-day disciplinary suspension for the grievor in 2023. The grievor presented grievances against each suspension. He transmitted both grievances to the second step of the grievance process on July 18, 2023. On August 16, 2023, the grievor's bargaining agent (which was still representing him at the time) agreed with Health Canada to hold these two suspension grievances in abeyance until the grievance about his termination had been resolved. Those two grievances remain in abeyance at the second step.

[4] The grievor now attempts to refer his two grievances to adjudication without them having been dealt with at the second or third steps of the grievance process.

[5] Grievances about any matter are not presented to the Federal Public Sector Labour Relations and Employment Board ("the Board") immediately. They are presented to the employer. Only after the employer has had an opportunity to decide a grievance at each level of the grievance process 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; *FPSLRA*), 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 | ***209 (1)*** *Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu* |

| | |
|---|---|
| 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 ….* | *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.* |

[6] The impact of those sections is obvious on their face. An employee with a grievable dispute against their employer must go through the internal grievance process before referring their case to the Board. The grievor is attempting to shortcut that rule. He may not, and therefore, I dismiss these two references to adjudication because they are premature.

[7] The grievor says that "… delays or procedural agreements such as abeyances do not void an employee's right to seek adjudication …". However, Health Canada is not suggesting that the grievor can never refer his grievances to adjudication. It is simply

saying that he must go through the grievance process first. The sections of the *FPSLRA* I just quoted require him to. I have no discretion to permit him to bypass the grievance process.

[8] The grievor argues that his suspension grievances also include allegations of breaches of his human rights, so they should be permitted to proceed immediately to adjudication. There is no authority for that proposition, and the cases cited by the grievor do not stand for that proposition either.

[9] Finally, the grievor argues that the Board should allow him to refer these grievances to adjudication, to avoid delay. However, the delay is not Health Canada's fault. The delay is because of the agreement to hold the grievances in abeyance.

[10] The grievances are in abeyance only as long as both parties want them to remain so. At any time, the grievor or Health Canada can decide not to hold the grievances in abeyance and insist that they be heard. At that point, the timelines in the grievor's collective agreement kick in. This means that if the grievor wants his grievances to be decided at the second step, he needs only to ask, and then Health Canada has 10 working days to decide them at the second step. If Health Canada delays deciding them at the second step, he can refer them to the third step within 15 working days of that deadline. Health Canada then has 20 working days to respond to the grievances at the third and final step. If it misses that deadline, he has 40 calendar days in which to refer his grievances to adjudication; see the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79), at s. 90(2).

[11] In other words, if the grievor wants his grievances heard quickly so he can refer them to the Board, he can arrange that. But he cannot refer them to the Board before taking those steps.

[12] For these reasons, the two references to adjudication in Board file numbers 566-02-52509 and 52543 are dismissed.

**III. Termination grievance (Board file no. 566-02-49415)**

[13] The grievor grieved the termination of his employment for unsatisfactory performance and properly referred that grievance to adjudication. At the time, he was represented by his bargaining agent. His bargaining agent no longer represents him. After the grievor began representing himself, he sought leave from the Board to file

what he calls an addendum to his grievance. Health Canada objects to the grievor's addendum on two grounds: it discusses settlement offers made by the respondent, and it raises new arguments and grounds that were not presented during the grievance process. The grievor also sought leave to file exhibits related to his grievance. I will deal with the addendum first and then turn to the exhibits.

[14] The grievor filed two versions of his proposed addendum: one on May 1, 2025 and another slightly modified version on July 2, 2025. The changes were mainly to page numbering and formatting. My references to page numbers are to the July 2 version of the addendum.

**A. Settlement information**

[15] In the grievor's addendum, he refers to offers made by the respondent to settle his grievance. In the addendum itself, it is not clear why he does so. However, in his submissions filed in support of his request to use the addendum, he explains that he intends to argue that the employer's offer was part of a bad faith course of conduct. The grievor argues that the settlement offer was not confidential because the offer was made after he left the mediation and because the parties' mediation agreement referred only to the confidentiality of any memorandum of settlement.

[16] Neither argument withstands close scrutiny.

[17] To deal with the second argument first, the grievor relies on article 9 of the mediation agreement, which states that "… any memorandum of settlement reached by the parties shall not be placed on any Board file, nor shall its terms be disclosed unless the parties otherwise agree." The grievor argues that since there was no settlement, this article does not apply. I agree. However, the grievor ignores article 4, which states:

> *(4) all information exchanged during this entire procedure shall be divulged on a without prejudice basis for the purposes of settlement negotiations and shall be treated as confidential by the parties and their representatives, subject to the requirements of any statute and the need to protect individuals against physical harm. Furthermore, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation;*

[18] An offer to settle falls within the ambit of "information exchanged" for the purposes of article 4. Therefore, the agreement states expressly that the parties must treat this information as confidential.

[19] To deal with the first argument, any communications made during the course of negotiating a possible settlement to this grievance, including the contents of any offers, are protected by settlement privilege, regardless of whether they are made during a Board-arranged mediation. Settlement privilege is a rule that "… wraps a protective veil around the efforts parties make to settle their disputes by ensuring that communications made in the course of these negotiations are inadmissible"; see *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 ("*Sable*") at para. 2. These communications are presumptively inadmissible, and a party seeking an exemption from that presumption must show on the balance of probabilities that there is a competing public interest that outweighs the public interest in encouraging settlements (see *Sable*, at para. 19). The grievor did not identify any reason to exempt this communication from settlement privilege; nor do any of the "generally recognized exceptions" (i.e., to prevent double recovery, where the communications are unlawful, to prove that a settlement was reached or to determine the terms of the settlement, and when addressing costs after a case has been decided — see *Phoa v. Ley*, 2020 ABCA 195 at para. 19) apply in this case.

[20] Therefore, the grievor may not file an addendum that discusses settlement proposals or the conduct of settlement discussions.

## B. New grounds

[21] The main point of contention between the parties is whether the addendum improperly adds new grounds to the grievance. The respondent argues that a party may not "… raise new arguments or grounds at adjudication that were not presented during the grievance process." I will begin by outlining the legal framework for addressing the respondent's argument and then turn to considering the grievor's proposed addendum in light of those principles.

### 1. Legal framework

[22] The legal framework for assessing whether a party may modify their position at adjudication involves the interplay of three principles.

**a. First principle: liberal reading of grievances**

[23] The first principle is that a grievance "… should be liberally construed so that the real complaint is dealt with and the appropriate remedy …" (from *Blouin Drywall Contractors Ltd. v. United Brotherhood of Carpenters and Joiners of America, Local 2486*, 1975 CanLII 707 (ON CA)). In other words, "… a grievance should not be won or lost on the technicality of form, but on its merits" (from *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42 at para. 68).

[24] This principle reflects the character and nature of the grievance process. Grievances are not usually drafted by lawyers or other legal professionals. When 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" (from *Van Duyvenbode v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2008 PSLRB 90 at para. 45, upheld by the Federal Court of Appeal in 2010 FCA 66). The grievance process is not an adjudicative process before an independent third party. This means that grievance meetings are not designed to give a grievor the opportunity to convince an independent third party that they are right and the employer is wrong; grievance meetings are an opportunity for a grievor to discuss a complaint or concern with a relatively senior manager. Grievance meetings are not about a grievor marshalling evidence and jurisprudence. Sometimes, a grievor marshals evidence or jurisprudence in a grievance meeting in an effort to convince the manager hearing the grievance that there is a risk that an independent third party (such as the Board) will side with them, thus encouraging the manager to resolve the dispute. Sometimes, a grievance meeting is an opportunity for the grievor and manager to work on a pragmatic resolution to a dispute. Sometimes, a grievance meeting is an opportunity for the grievor to alert a senior manager to something that a more junior manager has done, so that the senior manager can investigate and correct any error that was made. Sometimes, a grievance meeting does all three things. My point is that grievance meetings are not adjudicative hearings. Grievances are about trying to convince management to do something. Therefore, the style and substance of the arguments made are often very different from the style and substance of arguments made to the Board.

**b. Second principle: jurisdiction**

[25] The second principle is that the Board only has the jurisdiction to hear a grievance that has been presented to the employer. Subsection 209(1) of the *FPSLRA*

allows an individual to refer to adjudication a "… grievance that has been presented up to and including the final level in the grievance process …". Section 225 also provides that "[n]o grievance may be referred to adjudication until the grievance has been presented at all required levels in accordance with the applicable grievance process." Finally, s. 241(2) provides that the failure to present a grievance at all the required levels in accordance with the applicable grievance process is not a defect in form or technical irregularity that the Board can forgive. When the nature of a case changes significantly between the grievance process and adjudication, the grievance (i.e., the matter being grieved and relief sought) cannot be said to have been presented up to and including the final level in the grievance process.

[26] This principle was the basis of the Federal Court of Appeal's decision in *Burchill v. Attorney General of Canada*, 1980 CanLII 4207 (FCA). In that case, the grievor presented a grievance asserting that his acceptance of a term position did not affect his indeterminate employment status, and therefore, the termination of his term position meant that he was entitled to several rights provided for indeterminate employees. When he referred his grievance to adjudication, he changed the nature of his grievance and argued that his termination was disguised disciplinary action. This was important because the Board at the time would not have had jurisdiction over his first assertion but would have had jurisdiction over the second. The Board dismissed the grievance, and the Federal Court of Appeal upheld that dismissal, stating:

> …
>
> *In our view, it was not open to the applicant, after losing at the final level of the grievance procedure the only grievance presented, either to refer a new or different grievance to adjudication or to turn the grievance so presented into a grievance complaining of disciplinary action leading to discharge within the meaning of subsection 91(1). Under that provision it is only a grievance that has been presented and dealt with under section 90 and that falls within the limits of paragraph 91(1)*(a) *or (*b*) that may be referred to adjudication. In our view the applicant having failed to set out in his grievance the complaint upon which he sought to rely before the Adjudicator, namely, that his being laid off was really a camouflaged disciplinary action, the foundation for clothing the Adjudicator with jurisdiction under subsection 91(1) was not laid. Consequently, he had no such jurisdiction.*
>
> …

[27] Put more simply, the question is whether the allegations made at adjudication alter the original grievance enough to change its nature and make it a new grievance (see *Canada v. Rinaldi*, 1997 CanLII 16721 (FC), *Price v. Canada (Attorney General)*, 2016 FC 1408, and *Canada (Attorney General) v. Gallinger*, 2022 FCA 177 at para. 62). If they do, the Board has no jurisdiction to hear this new grievance.

[28] The grievor argues that the rule in *Burchill* has been superseded by the Supreme Court of Canada's decision in *Barendregt v. Grebliunas*, 2022 SCC 22. *Barendregt* is about the rule for when new evidence may be filed on appeal. However, the Board is not hearing an appeal of an employer's grievance decision; it is conducting a *de novo* hearing, meaning that it hears the case from the beginning and not like an appeal or review of the employer's decision (see *Canada (Attorney General) v. Rushwan*, 2023 FCA 118 at para. 21). This means that when a party adduces evidence to the Board in an adjudication hearing, it is not adducing fresh evidence — it is adducing evidence for the first time. Therefore, *Barendregt* has no bearing on this case and is also irrelevant to the point made in *Burchill*.

[29] Similarly, the grievor also argues that the rule in *Burchill* violates ss. 7, 11, and 15 of the *Canadian Charter of Rights and Freedoms* (enacted as Schedule B to the *Canada Act 1982*, 1982, c 11 (U.K.); "the *Charter*") because it prevents him from introducing existing or new evidence that is crucial to his case. Again, *Burchill* does not have anything to do with the rules of evidence. *Burchill* is not about what evidence the grievor may adduce; it is about whether he is trying to change the nature of his grievance. In any event, the grievor does not explain how ss. 7 or 11 of the *Charter* apply to his case. As for s. 15, he states only that a rule that unfairly disadvantages one party violates s. 15 of the *Charter* because it results in unequal treatment. However, s. 15 of the *Charter* prohibits discrimination only on enumerated or analogous grounds. The grievor does not identify any enumerated or analogous ground, so I cannot assess his *Charter* argument in any way.

**c. Third principle: procedural fairness to the employer**

[30] The third principle is one of procedural fairness. The Federal Court in *Boudreau v. Canada (Attorney General)*, 2011 FC 868, stated that "… the rules of procedural fairness dictate that employer should not be required to defend … against a substantially different characterization of the issues than it encountered during the

grievance procedure." The Federal Court of Appeal quoted this with approval in *Gallinger*, at para. 59.

[31] Of the three principles, this one is by far the least important in this case. The rules of procedural fairness require that a party have adequate notice of the case to be met. A deficiency in notice can be cured by providing particulars. It is one thing if the grounds of a grievance shift significantly during an adjudication hearing; it is quite another thing if a party receives the particulars of a shift in grounds months before a hearing commences. In this particular case, the respondent has not alleged that it is prejudiced by the addendum; for example, it does not allege that it has lost evidence, thinking that the evidence would not be relevant to the grievance.

[32] Instead, this case is largely about how to balance the first two principles.

**2. Specific objections by Health Canada**

[33] As I stated earlier, the respondent objects to the addendum because it raises "new arguments or grounds" for the grievance.

[34] The legal principles identified earlier do not prevent a party from making a new or different argument at adjudication. As the Board stated in *Anderson v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLREB 75 at para. 100:

> *… the* Burchill *decision cannot be interpreted as a blanket pronouncement preventing grievors from raising any new arguments at adjudication to support their cases. Indeed, grievors are free to raise new arguments at adjudication to support their positions, provided that those arguments do not change the nature of the dispute that the parties discussed during the grievance process.*
>
> [*Sic* throughout]

[35] Specifically, and particularly relevant given the nature of the addendum, the Board in *Delage v. Treasury Board (Department of Fisheries and Oceans)*, 2008 PSLRB 56, permitted a grievor to make a human rights argument for the first time at adjudication. The grievance in that case was about whether the grievor was entitled to a wage increase from a retroactive reclassification that occurred while he was on parental leave. The grievance did not refer to the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6), but the grievor's counsel raised human rights for the first time when preparing for the adjudication hearing. The Board concluded that the human rights

argument was just an argument and that making that argument did not change the nature of the grievance.

[36] The real issue is whether the addendum changes the grounds of the grievance so substantially that it is a different grievance from the one presented before adjudication. In deciding whether it does, I will consider both the text of the grievance and the written argument made by the grievor's bargaining agent at the final level ("the grievance presentation"). In doing so, I will read the grievance and argument broadly and liberally.

[37] The grievor's addendum is lengthy. I asked the respondent to identify the specific parts of it that it objected to in hopes that its objection was to isolated parts, but it listed almost the entire addendum. Rather than go through the addendum line by line, I divided it into six categories.

[38] The first thing that the addendum adds (in paragraphs 1 to 8) is context before April 2022 and a discussion of the first negative performance appraisal and performance improvement plan. The grievance presentation briefly mentions that the grievor began working for the respondent in 2001 but starts its narrative in earnest with the grievor's medical leave in November 2021 and then skips ahead to the first negative performance rating on April 29, 2022. The addendum adds additional context around the events leading to his November 2021 medical leave and what happened between his return to work and receiving a negative performance appraisal. These paragraphs conclude by questioning the veracity of the negative performance assessment and performance improvement plan.

[39] The evidence adduced at adjudication typically includes context that goes beyond the grounds of the grievance. These paragraphs are just context. They do not change the nature of the grievance and are permitted. The only aspect of the addendum that touches on the nature of the grievance is the allegation that the negative performance assessment is inaccurate. However, the grievance presentation alleges that the termination for unsatisfactory performance was in bad faith because, among other things, the grievor's performance assessment suddenly declined upon having other issues or conflict with a supervisor. The 2022 performance rating is the "sudden decline" referred to in the grievance presentation. There is no change in the grievor questioning that performance rating.

[40] The second thing that the addendum adds is significant detail about the employer's request for medical information and the grievor's absence in 2022 and 2023 (paragraphs 9 to 35). The addendum covers in significant detail the grievor's concerns about the fact of, and processing of, the respondent's request for medical information.

[41] The grievance presentation also touched on these issues, but only briefly, as follows:

> …
>
> *15. That sick leave is the subject of another grievance that Dr. Salem has filed against Health Canada. It is not relevant for today's purposes to go it through* [*sic*] *in detail. Suffice it to say there was a lot of back and forth, numerous doctor's notes and an independent report were* [*sic*] *provided, with Dr. Salem asserting throughout that he was fit to return to work, and the employer maintaining it required more information before he could do so.*
>
> …

[42] The grievance presentation identifies the issue and says that it is not relevant to go through it in detail. All the addendum does is fill in that detail. This is not a change to the nature of the grievance. Additionally, the grievance presentation listed — as one example of bad faith — the "… allegation that the employer forced him on sick leave …". This part of the addendum fills in details about that ground of the grievance.

[43] The third thing that the addendum does (at paragraphs 36 to 39) is describe the grievor's concerns about the way his performance was assessed leading up to his termination. However, his grievance presentation clearly and repeatedly challenges the way the grievor's performance was assessed: it says that he did not receive concrete standards of performance and that he did not receive adequate training or support to meet the standard of performance. All the addendum does is provide more details about these existing allegations.

[44] The fourth thing that the addendum does is list the grievor's arguments. All those arguments are also set out in the grievance presentation. Specifically, he argues that there was no formal performance evaluation between his return from medical leave and his termination (which is referred to at paragraph 45 of his grievance presentation), there was no reasonable time in which to meet the required performance (which is referred to at paragraphs 54 to 64 of his grievance presentation), and there

were no efforts made to find him alternative work (which is referred to at paragraphs 65 to 69 of his grievance presentation), all contrary to the Treasury Board policy (which is referred to throughout his grievance presentation).

[45] The addendum goes on to detail four details about his argument that his termination of employment was in bad faith. His grievance presentation already alleged bad faith, so he has not changed the nature of his grievance.

[46] However, the addendum goes further than simply alleging bad faith and does a fifth thing. The grievor is making a claim for what is commonly called "bad faith damages" (technically, damages arising from a breach of the obligation of good faith in the manner of dismissal). He identifies four reasons that he should be awarded such damages: that the respondent's evaluation of his performance was factually false; that the respondent was unduly insensitive, given his medical condition; that the respondent's actions impacted his future career prospects; and that the respondent caused him mental distress.

[47] The grievance presentation already alleged bad faith. The grievor is not changing the nature of his grievance (which always alleged bad faith). Additionally, the grievance form seeks "… all such other redress required to remedy the situation …" and that the grievor "be made whole." The grievor's claim for bad faith damages fits within those two remedies sought.

[48] Sixth, the addendum lists 16 so-called "final arguments." The first 11 are about the basis of the grievance, and the last 5 specify the remedy he seeks and the reasons for it (mainly, his personal and financial circumstances and his inability to mitigate his losses). The first 11 just elaborate facts or arguments made earlier in his addendum. As for the last 5, I have already explained that he is explaining the basis for the remedy that he already included in his grievance.

### 3. Human rights elements to the addendum

[49] The respondent is particularly concerned that the grievor introduces new allegations of disability discrimination and a failure to accommodate his disability. I do not share those concerns. A careful review of the addendum discloses that the grievor does not actually allege discrimination on the basis of disability. His addendum does not use the word "discrimination". It contains, as a heading, this phrase: "My

Submission for human rights damages and for monetary compensation: I be made whole." However, when he specifies the basis of that claim, it is for bad faith damages, not human rights damages. The closest he comes to making a human rights argument is when he links the allegation of bad faith to his medical conditions; however, his grievance presentation already argued that his medical condition was a relevant consideration (at paragraphs 58 and 59).

[50] For the first time, the grievor does say that his sick leave in November 2021 was triggered by the respondent's refusal to grant him other forms of leave and that this decision was discrimination on the basis of family status. However, as I said before, this is just context. The grievance itself is not against the refusal to grant him leave in 2021; it is about the termination of his employment in 2023.

[51] Finally, the grievor filed a 35-page submission in support of the addendum. Almost all of that written submission was an explanation for why his factual allegations are correct and why the respondent should not have terminated his employment. Those submissions are not relevant at this time. My decision is that the grievor may file the addendum, with the exception of the elements noted in this decision. I am not deciding one way or the other whether any of the facts contained in the addendum, or in the grievor's submissions, are substantiated.

**C. Exhibits (including those excerpted in the addendum)**

[52] Before asking for leave to file his addendum, the grievor attempted to file a series of exhibits with the Board. On May 1, 2025 the Chairperson of the Board ordered that the exhibits would not be accepted for filing and would not be included as part of the Board's record because the Board does not accept evidence (exhibits) before a hearing, unless it specifically orders otherwise. The grievor then sought leave to file his addendum.

[53] The addendum includes some excerpts from documents that the grievor sought to introduce as exhibits. Those excerpts must be extracted from the addendum. To admit those excerpts in the addendum would permit the grievor to indirectly file exhibits that he was directly ordered not to.

[54] In summary:

- The grievor will be permitted to file an addendum to his grievance.

- The grievor is directed to remove all excerpts from other documents from his addendum. Those excerpts are highlighted by the grievor in turquoise at paragraphs 13, 19, and 23 of the addendum.

- The grievor is directed to remove all references to "exhibits" from his addendum.

- The grievor is directed to remove all references to the mediation and any settlement discussions with the respondent. Those references are at pages 10 (the sentence starting with, "Recently, and during the Labor Board mediation …") and 11 (the sentence starting with, "The moral, psychological, and professional damages …").

- The grievor is to re-file the addendum, with those changes, within 30 days from the date of this decision.

- The grievor is not permitted to make any other changes to his addendum or to file any exhibits or evidence with the Board until the hearing has been scheduled and a timetable for filing exhibits has been set.

**IV. Second termination file (Board file no. 566-02-52285)**

[55] The grievor has filed a reference to adjudication for a second grievance against his termination of employment that sets out new arguments against his termination. There is no grievance that underlies this attempt to refer a case to adjudication. As I set out earlier, matters cannot be referred to adjudication without first being presented as grievances using an employer's internal grievance system. 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."

[56] The grievor acknowledges that internal grievance processes must be exhausted, but states that "… this requirement is not absolute. Jurisprudence has established that the Board may waive this requirement when internal remedies are practically unavailable." He cites *Kazemi*, *Laferrière v. Deputy Head (Canadian Space Agency)*, 2008 PSLRB 53, and *Fauteux v. Deputy Head (Canadian Food Inspection Agency)*, 2022 FPSLREB 84, for that proposition. *Kazemi* and *Laferrière* say no such thing, and in fact say the opposite. There is a single line in *Fauteux* at paragraph 37 saying, "With some exceptions, [the grievance process] should not be circumvented before referring a matter to adjudication." However, earlier in that decision, the Board explained that those exceptions exist when the parties agree to eliminate a step or all steps in the

grievance process except the final one, or if the case is about a termination (like this one), in which case the grievance can be presented directly to the final step. There is no exception to the requirement to file a grievance; the exception is to the requirement to use the initial grievance steps.

[57] Since the grievor never presented this grievance to Health Canada, I am dismissing this attempt to refer it to adjudication.

[58] In light of my conclusion, I do not need to address the grievor's arguments about whether the reference to adjudication is untimely (and, if so, whether to grant an extension of time) or some other grounds raised by Health Canada for striking this reference to adjudication.

## V. Submissions by the grievor

[59] In his submissions, the grievor listed and relied on a number of cases that do not exist (namely, *Sweeney v. Canada*, 2006 PSLRB 125; *O'Brien v. Canada (Treasury Board)*, 2004 PSSRB 27; *Nelligan v. Canada (Attorney General)*, 2008 FC 745; and *OPSEU v. Ontario (Ministry of Correctional Services) (Kirkwood Greivance)*, [2005] O.G.S.B.A. No. 100). Referring to non-existent cases and referring to existing cases for propositions that are unrelated to those cases (which the grievor also did, and I discussed earlier), are common features of submissions generated or researched by artificial intelligence. I have assumed that this is the case here and that the complainant has been misled by the artificial intelligence tools that he used to generate or research his submissions — rather than assume that he deliberately misled the Board. However, I agree with the Canada Industrial Relations Board in *Choi v. Lloyd's Register Canada Limited*, 2024 CIRB 1146 at para. 79 when it stated:

> *[79] … Parties should use caution when using AI to generate submissions, particularly where the submissions include references to legal authorities. If parties use AI to prepare submissions or other documents, it is imperative that they verify all AI-created content to ensure its accuracy and reliability.*

[60] Similarly, the grievor also cites the website reddit.com in support of his case. I did not trawl through reddit looking for the post that the grievor read that allegedly supports his proposition. In any event, reddit is not a source that I can rely on when considering legal propositions.

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

*(The Order appears on the next page)*

## VI. Order

[62] The references to adjudication in Board file numbers 566-02-52285, 52509, and 52543 are dismissed.

[63] As for the grievance in Board file no. 566-02-49415, the grievor is permitted to file an addendum, on the following conditions:

- The grievor is directed to remove all excerpts from other documents from his addendum. Those excerpts are in turquoise at paragraphs 13, 19, and 23 of the addendum.
- The grievor is directed to remove all references to "exhibits" from his addendum.
- The grievor is directed to remove all references to the mediation and any settlement discussions with the respondent. Those references are at pages 10 (the sentence starting with, "Recently, and during the Labor Board mediation …") and 11 (the sentence starting with, "The moral, psychological, and professional damages …").
- The grievor is to re-file the addendum, with those changes, within 30 days from the date of this decision.
- The grievor is not permitted to make any other changes to his addendum or to file any exhibits or evidence with the Board until the hearing has been scheduled and a timetable for filing exhibits has been set.

September 24, 2025.

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