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



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

AMIR ROKHNEJAD

Grievor

and

**DEPUTY HEAD
(Correctional Service of Canada)**

Respondent

Indexed as

Rokhnejad v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Joanne B. Archibald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Respondent: Patricia Demers

Decided on the basis of written submissions,
filed February 3 and 24 and March 3, 2025.

I. Objection to the Board's jurisdiction

[1] This decision addresses an application objecting to the Federal Public Sector Labour Relations and Employment Board's ("the Board") jurisdiction to hear a grievance referred to adjudication. For the following reasons, the application is allowed.

[2] Amir Rokhnejad ("the grievor") filed a grievance concerning the termination of his employment with the Correctional Service of Canada (CSC). On December 16, 2024, the matter was referred to adjudication.

[3] On January 17, 2025, the CSC advised the Board of its intention to raise an objection to the timeliness of the referral. On February 3, 2025, it provided a submission, stating that the grievor failed to present his grievance at the first level of the grievance process within the timelines stipulated in the collective agreement between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN (UCCO-SACC-CSN; "the bargaining agent") that expired on May 31, 2022 ("the collective agreement"). As such, the grievance was not timely and could not proceed.

[4] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) provides that the Board "... may decide any matter before it without holding an oral hearing." I am satisfied that that this is an appropriate case to be decided based on the written submissions of the parties. For the reasons that follow, the objection is allowed. The Board has no authority to continue with this matter, as the grievance was not presented at the first level within the timelines defined by the collective agreement.

II. Summary of the evidence

[5] A chronology of events follows.

[6] The grievor was on leave without pay due to illness or injury from July 18, 2020, onward.

[7] On November 25, 2022, WorkSafeBC, an agency established by legislation in British Columbia to oversee a no-fault insurance system for the workplace, sent a letter to the grievor and copied it to the CSC. The letter set out the decision to accept his permanent condition and restrict him from returning to work at the CSC. WorkSafeBC approved wage-loss benefits for him.

[8] On November 30, 2022, the CSC sent the grievor a letter containing these three options to resolve his status: return to work, retire on medical grounds, or resign (“the options letter”).

[9] The deadline for the grievor to respond was January 4, 2023. The CSC received no response from him by that date.

[10] On January 5, 2023, the CSC resent the options letter, indicating that it had not received a response. It provided a deadline of January 27, 2023, for the grievor to indicate his chosen option. It concluded by stating this: “If we do not hear from you by this date, the Correctional Service of Canada will be obligated to take the appropriate action to bring closure to our employment relationship.”

[11] On January 31, 2023, without having received a response to the second letter, the CSC sent the options letter a third time. The deadline to respond was February 22, 2023. The final paragraph stated this: “If we do not hear from you by this date, the Correctional Service of Canada will begin proceedings to terminate your employment on the grounds of a non-disciplinary termination.”

[12] On February 1, 2023, the grievor emailed several CSC employees, copying three bargaining agent representatives. He did not address it to the author of the options letter.

[13] In part, the email stated this: “I just received not one but two messages from regional terrorist office again in less than 18 hours. Did I not make myself clear last time?”

[14] On March 8, 2023, Corinne Blanchette, a bargaining agent representative, wrote to the grievor. While much of the email provided to the Board is redacted, in the remaining paragraph, Ms. Blanchette stated, in part, the following:

Also, I am told that CSC has sent or is sending you a third and final decision option letter. What I heard and it is really second or third hand information is that you have not replied to previous one. I would be important to reply to the letter otherwise, CSC might consider a termination for incapacity.

[Sic throughout]

[15] The grievor provided the following undated message, which was a response to Ms. Blanchette’s message:

Hi Corinne,

To this day I have not received anything, you are being fed lies and collusion. I blocked all their emails back in November of last year and no such letters have even been sent to my mail box. I clearly said if there are anything that needs to be said, they can be said to you or Dan/Derek/John. Why are we still talking about this?

[16] On May 4, 2023, the CSC provided written notice to the grievor of the termination of his employment (“the termination letter”). In part, it stated as follows:

...

You have been provided with several opportunities to notify the Employer of your decision of how you intend to resolve your leave without pay situation. Unfortunately, you have failed to provide the Employer with the required information to resolve your situation.

As a result, I have decided to proceed with the termination of your employment, for reasons other than breaches of discipline, from your position of Correctional Officer I at Kent Institution effective close of business May 4, 2023.

This termination from the Federal Public Service is for non-disciplinary reasons in accordance with the authority contained in Section 12(1)(e) of the Financial Administration Act.

...

[17] On May 10, 2024, the grievor filed this grievance. He alleged that the termination was unjust and illegal and asserted that he had not received any emails from the CSC, as he had blocked them. He also stated that he had not received any registered mail from the CSC.

[18] As the grievance addressed a termination of employment under s. 12(1)(e) of the *Financial Administration Act* (R.S.C., 1985, c. F-11), it proceeded directly to the final level of the grievance process, as stipulated by the collective agreement.

[19] On June 3, 2024, the bargaining agent advised the CSC that it no longer represented the grievor in this matter.

[20] On October 25, 2024, the CSC issued its final-level grievance response, stating, in part, as follows:

...

On a preliminary matter, clause 20.11 of the Correctional Services (CX) collective agreement provides that an employee may present a grievance no later than on the twenty-fifth (25th) day after the

date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance. Your termination was effective May 4, 2023; however, I note that your grievance was presented over one year later, namely on May 24, 2024. As such, your grievance was not presented within the required timeframes. Your grievance is therefore denied as you were untimely in its filing...

III. Summary of the arguments

A. For the grievor

[21] The grievor's position is that there is no proof that he received the options letters or the termination letter. He argued that he blocked email from the CSC before the November 30, 2022, options letter was issued. Therefore, he could not possibly have received it. In his view, the primary issue was whether the CSC could terminate his employment without proper notification.

[22] To support his argument, he provided a two-page document sent from his email account. The first page included a list of email addressees for CSC employees and members of the bargaining unit. It bore the date of November 21, 2022. On a separate page, indicated as page two of the email, and under the heading "Cease & Desist - DO NOT CONTACT ME", the following appeared:

This is my final and official message and warning. I warn and caution you, DO NOT CONTACT ME FOR ANY REASON WHATSOEVER. I am going to block all your emails and phone numbers. Failure to comply will result in you getting sued. Go through Mrs. Blanchette or Mr Mackinnon/Randle/Chin and if they deem necessary they will let me know.

[23] The grievor stated that by blocking the CSC's emails, he did not avoid communication with the CSC but redirected it. In his view, the CSC ignored his request by continuing to email the options letters to him rather than to his bargaining agent. Further, it failed to verify whether he actually received the options letters.

[24] The grievor provided this email of February 23, 2024, from Daniel MacKinnon, the bargaining agent's 2nd national vice-president:

As i [sic] told you, when we spoke on the phone a few months back, I followed up with CSC about my understanding that you had been let go. They have informed us that you were fired, and the notice was sent via registered mail and was signed for upon delivery.

They also informed us that you were emailed with this information.

[25] On April 16, 2024, Mr. MacKinnon emailed a copy of the termination letter to the grievor and suggested that they follow up by telephone.

[26] The grievor argued that the Board should consider that he did not receive actual notice of the termination of his employment until April 16, 2024, when Mr. MacKinnon provided the termination letter to him. On the basis of receiving the letter on that date, the grievance should be considered timely. His case represents a meaningful opportunity for any public sector employee to access justice without being silenced by technicalities or employer misconduct.

B. For the CSC

[27] The CSC argued that the Board has no jurisdiction to hear the grievance, as the grievor failed initially to present it within the prescribed 25-day period set out in the collective agreement.

[28] The CSC asserted that well before April 16, 2024, the grievor was aware of the circumstances that gave rise to his grievance. Although he stated that he did not receive the three options letters, he was aware of them. The reference in the options letters to termination of employment or dismissal for non-disciplinary reasons represented an administrative option for the CSC, given the grievor's protracted absence from the workplace, due to illness.

[29] The grievor did not dispute that he communicated with CSC management and bargaining agent representatives from January 2023 through June 2024.

[30] Ms. Blanchette's March 8, 2023, communication demonstrated that the grievor knew or ought to have known of the options letters sent to him and the potential for his employment to be terminated.

[31] The grievor did not comply with the time limits set out in the collective agreement, and the grievance must be considered untimely. The CSC denied the grievance at the third level in accordance with those provisions.

IV. Analysis and reasons

[32] The CSC objected to the Board's jurisdiction over this grievance due to timeliness, for, if the grievance was not initially presented within the time stipulated in

the collective agreement, and provided that this was recognized in the grievance process, the Board has no authority to proceed to a hearing.

[33] To determine the question of timeliness, I refer to the collective agreement. It constitutes a lawful agreement between the parties to it, and it governs aspects of the grievor's employment relationship.

[34] At the time of the events in question, the relevant collective agreement governing the grievor's employment had been signed on February 2, 2018.

[35] At clauses 20.11 and 20.19, it provides for submitting a termination grievance and it being heard, as follows:

20.11 A grievance may be presented at the first (1st) level of the procedure in the manner prescribed in clause 20.07 no later than the twenty-fifth (25th) day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance.

...

20.19 Where the Employer demotes or terminates an employee for cause pursuant to paragraph 12(1)(c), (d) or (e) of the Financial Administration Act, the grievance procedure set forth in this agreement shall apply except that the grievance shall be presented at the final level only.

20.11 Au premier (1er) palier de la procédure, un grief de la manière prescrite au paragraphe 20.07 peut être présenté, au plus tard le vingt-cinquième (25e) jour qui suit la date à laquelle il est notifié, oralement ou par écrit, ou prend connaissance, pour la première fois, de l'action ou des circonstances donnant lieu au grief.

[...]

20.19 Lorsque l'employeur rétrograde ou licencie un-e employé-e pour un motif déterminé aux termes des alinéas 12(1)c), d) ou e) de la Loi sur la gestion des finances publiques, la procédure de règlement des griefs énoncée dans la présente convention s'applique, sauf que le grief n'est présenté qu'au dernier palier.

[36] According to the May 4, 2023, letter, the CSC's action to terminate the grievor's employment for non-disciplinary reasons was taken under s. 12(1)(e) of the *Financial Administration Act*. In accordance with clause 20.19 of the collective agreement, the grievance proceeded directly to the final level, and the CSC denied it due to untimeliness, as provided in clause 20.11.

[37] As the CSC challenged the Board's jurisdiction to hear this matter on that basis, the preliminary and only question for the Board to answer at this stage is whether the

grievance was presented within the time prescribed in clause 20.11. If it was not, then the Board does not have the authority to inquire further into the matter of the grievor's termination. The grievor's submission that timeliness is a procedural, not jurisdictional issue, fails to acknowledge that the Board can only hear grievances when the preconditions laid out in the collective agreement and under statute are met. Timeliness is one of those preconditions.

[38] As noted, the collective agreement provides for 25 days to file a grievance. That period expires 25 days "... after the date on which he or she is notified orally or in writing **or on which he or she first becomes aware of the action or circumstances giving rise to the grievance**" [emphasis added].

[39] The grievor argued that he did not have the termination letter in hand until the bargaining agent provided it to him in April 2024. I accept that this that may be so. However, that date may not be determinant. The collective agreement also requires me to consider the date on which he became aware of the action or circumstances that gave rise to the grievance. It requires considering the moment when he became aware of the termination of his employment, which may be before he had the termination letter in hand.

[40] First, I note that the CSC emailed the termination letter to the grievor on May 4, 2023. It received an automated response through Microsoft Outlook, indicating that the email's delivery to the grievor's email address was complete.

[41] There is no indication that the mail server rejected or blocked it. That strongly suggests that the grievor received the termination letter on May 4, 2023.

[42] There are other indicators that the grievor knew that the CSC was taking steps. On February 1, 2023, he indicated his impatience with the CSC continuing to contact him. That coincided with the second options letter being sent.

[43] On March 8, 2023, Ms. Blanchette cautioned him about ignoring the CSC and advised him of the potential consequence.

[44] There is no evidence that the grievor followed up with the CSC, heeded Ms. Blanchette's warning, or took steps to address his evolving employment relationship.

[45] On May 4, 2023, the CSC emailed the termination letter to the grievor. There is no information demonstrating that any email addressed from the CSC to the grievor

was blocked or rejected. Indeed, as the email of May 4, 2023, at 12:39 p.m. indicates, the termination letter was successfully delivered. Therefore, I accept that from that time forward, the grievor could not deny having knowledge or awareness of the termination of his employment.

[46] Further, the grievor provided the Board with Mr. MacKinnon's February 23, 2024, text message, in which Mr. MacKinnon confirmed for the grievor that the CSC had terminated his employment and added that he had informed the grievor of it by telephone "a few months back". The grievor did not deny or refute the content of that text message.

[47] Even if I were to accept that the grievor did not know of his termination on May 4, 2023, there is no doubt that he knew of it when he spoke with Mr. MacKinnon in February 2024. It should be borne in mind that the collective agreement requires only that the grievor is aware "... of the action or circumstances giving rise to the grievance."

[48] Assuming that he did not know of the termination until he spoke with Mr. MacKinnon in February 2024, he acted at his peril by delaying until he received a copy of the termination letter from the bargaining agent. By the time he filed the grievance on May 4, 2024, he was well beyond the 25th day after learning of the termination. According to the collective agreement's provisions, the grievance must be considered untimely.

[49] As I have found that the grievance is untimely, the Board has no authority to proceed.

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

(The Order appears on the next page)

V. Order

[51] The objection based on timeliness is allowed.

September 18, 2025.

**Joanne B. Archibald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**