Date: 20251126

File: 566-02-45146

Citation: 2025 FPSLREB 158

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

KELLIE MATCHETT

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Matchett v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Goretti Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Maxime Crête, counsel

For the Employer: Larissa Volinets Schieven, counsel

Decided on the basis of written submissions, filed June 17,19 and 24, 2024.

REASONS FOR DECISION

I. Introduction

[1] This decision deals with a preliminary objection contesting the Federal Public Sector Labour Relations and Employment Board's ("the Board") jurisdiction. The grievor, Kellie Matchett, filed a grievance, alleging violations of the *Canada Labour Code* (R.S.C., 1985, c. L-2; "the *Code*") and the *Work Place Harassment and Violence Prevention Regulations* (SOR/2020-130; "the *WPHVP Regulations*"). The employer, the Correctional Service of Canada (CSC), argues that the grievance falls outside the scope of the Board's jurisdiction as established under the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *FPSLRA*").

[2] Specifically, the employer maintains that based on the *Burchill* principle (from *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.)), the grievance is procedurally barred, as it introduces, for the first time at adjudication, an alleged collective agreement breach. Moreover, the employer argues that the provision cited is a consultative obligation between it and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the bargaining agent") and that it does not confer individual remedial rights. Additionally, the employer contends that s. 208(2) of the *FPSLRA* precludes both the presentation and adjudication of the grievance, as the *Code* provides an administrative procedure for redress.

[3] Having reviewed the grievance, the employer's preliminary objection, and the parties' written submissions, I am satisfied that the record contains sufficient information for me to render a decision on the employer's objection without holding an oral hearing (see s. 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365)).

[4] Considering the principles established in *Burchill*, I find that the grievance advances a new argument that was not presented during the grievance process and therefore is outside the scope of the Board's jurisdiction. Consequently, the employer's preliminary objection is allowed, and the remaining issues are not subject to consideration. The grievance is denied.

II. Background

[5] At all relevant times, the grievor was employed as a correctional officer (CX-02) with the CSC at its Atlantic Institution in Renous, New Brunswick. She was subjected to the working conditions established in the collective agreement between the Treasury Board and the bargaining agent for the Correctional Services group, dated January 5, 2021, which expired on May 31, 2022 ("the collective agreement").

[6] Based on the chronological summary of events that the bargaining agent submitted, the events that led to this grievance began on May 15, 2018. On May 19, 2018, the grievor made a harassment complaint against the deputy warden. According to the same summary, on January 12, 2022, the grievor made a complaint under s. 126(1)(g) of the *Code*, and on March 5, 2022, she filed a grievance challenging the employer's failure to protect her from the alleged hazard.

III. The grievance and its referral to adjudication

[7] The grievance alleges violations of the *Code* and the *WPHVP Regulations*. Specifically, it cites s. 122.1 of the *Code*, which sets out the purpose of Part II as the prevention of workplace accidents, harassment, violence, and related injuries. The grievance also refers to s. 20 of the *WPHVP Regulations*, which outlines the employer's obligation to develop and implement preventive measures to mitigate the risk of workplace harassment and violence. The grievance reads as follows:

> *I grieve the fact that my employer has failed to protect me under regulation 20, of the Work Place Harassment and Violence Prevention Regulations, as I have been subject to a known hazard and I remain exposed to this hazard when coming to work every day.*
>
> *I also grieve the fact that there is a violation of the canada labour code more specifically; 122. 1 The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with, or occurring in the course of employment to which this Part applies.)*
>
> *There has absolutely been no prevention on the Harrassment matter that I brought forward to* [name redacted] *December 2021. In fact this been little or no support from management at work as the Harrassment is permitted to continue. As well there has been no formal investigation as per section F of the regulation.*
>
> [*Sic* throughout]

[8] As corrective actions, the grievor requested the following:

> • *Full protection from known hazzard while in or outside of the workplace*
>
> • *To be made whole, including returning of any leave used as a result of the employer failure to protect me*
>
> • *A written apology for the harm and suffering I have experienced as a result of the employer's lack of action to protect me while in and outside the workplace*
>
> • *Damages as determined to be just and fair by an adjudicator*
>
> [*Sic* throughout]

[9] The employer's first- and second-level replies include the following:

> [First-level reply]:
>
> …
>
> *… you have stated that the employer has failed to protect you under regulation 20 of the Workplace Harassment and Violence Protection Regulations. The institution has offered you post and roster changes to minimize exposure to your identified hazard. The Institution did offer you the opportunity to participate in conflict resolution through the Office of Informal Conflict Resolution. You did decline this offer.*
>
> …
>
> *The institution has investigated the matter and has deemed that there are no grounds to uphold this grievance* [*sic*].
>
> …
>
> [Second-level reply]:
>
> …
>
> *In regards to the grievance referenced above, you have moved this to a Level 2 as you were not satisfied with the initial Level 1 response. Although I can appreciate your concerns in the matter, I do have to concur with the first response in that the institution has offered you a number of options to try to minimize your exposure to the identified hazard but you declined all offers. You have not provided any additional information, therefore my response remains the same, there are no grounds to uphold this grievance.*
>
> …

[10] The grievance was referred to adjudication under s. 209(1)(a) of the *FPSLRA*. The bargaining agent referenced two collective agreement provisions, articles 18 ("Health

and Safety") and 37 ("No discrimination"). However, the reference to article 37 was abandoned during a case management conference.

IV. The employer's objection

[11] The employer's objection rests on three points. First, it argues that the grievance is barred by s. 208(2) of the *FPSLRA* because another Act of Parliament provides an administrative procedure for redress. Therefore, it claims that the grievance could not have been referred to adjudication under s. 209.

[12] Second, the employer sustains that the grievance does not raise any matter that falls within the Board's jurisdiction under s. 209 of the *FPSLRA*, since it attempts to raise matters that were not pursued in the grievance process by referring to article 18 of the collective agreement at the adjudication stage, which contravenes the *Burchill* principle.

[13] Third, the employer maintains that article 18 does not confer individual remedial rights but rather is a consultative obligation between it and the bargaining agent, and it does not ground a proper grievance under s. 209(1)(a) of the *FPSLRA*.

V. The bargaining agent's reply

[14] The bargaining agent urges the Board to take jurisdiction. Essentially, it argues that the grievance is grounded in the collective agreement by article 18. It explains that the grievance's subject matter is the employer's failure to take appropriate measures to protect the grievor from exposure to a workplace health-and-safety hazard, which constituted a breach of the CSC's obligations under article 18 of the collective agreement. The bargaining agent maintains that the grievance is rooted in the interpretation and application of that provision.

[15] Further, the bargaining agent argues that the procedures set out in Part II of the *Code*, along with the *WPHVP Regulations*, are ineffective with respect to addressing the grievance's core issue, namely, the application of article 18, and are less helpful to achieving the corrective measures sought. It contends that the mere existence of an administrative remedy under another federal law is insufficient to defeat the right to an individual grievance.

[16] Citing *Galarneau v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 70, and *Canada (Attorney General) v. Boutilier*, [2000] 3 F.C. 27 (C.A.) at para. 23,

the bargaining agent submits that Part II of the *Code* and the *WPHVP Regulations* do not provide the remedies that the grievor seeks. As such, those provisions cannot be considered an equivalent redress that would preclude filing an individual grievance under s. 209 of the *FPSLRA*.

[17] Particularly, the bargaining agent argues that the *WPHVP Regulations* do not provide for financial compensation, which is a central element of the grievance, and that this process leads only to non-binding recommendations, which are left entirely to the employer's discretion. It suggests that the recourse under the *Code* cannot be considered an administrative procedure for redress that would preclude filing an individual grievance under s. 208(2) of the *FPSLRA*.

VI. Analysis and reasons

[18] The parties devoted considerable effort to addressing whether article 18 of the collective agreement confers individual remedial rights and whether the *Code* provides an administrative procedure for redress capable of offering a personal remedy. These issues cannot be addressed unless the Board's jurisdiction under the *FPSLRA* is first established.

A. The legal framework

[19] The Board draws its legislative authority to hear grievances referred to it from the *FPSLRA*. Some of the provisions that guide the Board in adjudicating grievances referred to it are defined in ss. 209 and 225, 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 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*	***209 (1) Après l'avoir porté jusqu'au dernier palier de la procédure applicable*** *sans avoir obtenu 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 :*
(a) *the interpretation or application in respect of the employee of a*	***a)*** *soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention*

provision of a collective agreement or an arbitral award ….	*collective ou d'une décision arbitrale;*
…	[…]
Jurisdiction	***Compétence***
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.*

[Emphasis added]

[20] The Board's jurisdiction is determined by the terms of the initial grievance presented and conducted through all levels of the grievance process (see *Schofield v. Canada (Attorney General)*, 2004 FC 622 at para. 13; and *Fauteux v. Deputy Head (Canadian Food Inspection Agency)*, 2022 FPSLREB 84 at para. 41).

[21] In this case, the jurisdictional issue is whether the grievance could have been referred to adjudication under s. 209(1)(a) of the *FPSLRA*. As such, the issue also involves considering whether the essential character of this dispute arose from the interpretation or application of the collective agreement. The relevant collective agreement provision in dispute is article 18. It reads as follows:

Article 18: health and safety	***Article 18: santé et sécurité***
18.01 *The Employer shall make reasonable provisions for the occupational health and safety of employees. The Employer will welcome suggestions on the subject from the Union, and the parties undertake to consult with a view to adopting and expeditiously carrying out reasonable procedures and techniques designed or intended to prevent or reduce the risk of employment injury or illness.*	***18.01*** *L'employeur prend toute mesure raisonnable concernant la santé et la sécurité au travail des employé-e-s. Il fera bon accueil aux suggestions du syndicat à cet égard, et les parties s'engagent à se consulter en vue d'adopter et de mettre rapidement en œuvre toutes les procédures et techniques raisonnables destinées à prévenir ou à réduire les risques d'accidents ou de maladies reliés au travail.*

[Emphasis in the original]

B. The referral to adjudication is barred by the *Burchill* principle

[22] The grievance alleges violations of the *Code* and its *WPHVP Regulations*. The grievor claims that the employer failed to protect her in accordance with s. 20 of the *WPHVP Regulations* and cites a breach of s. 122.1 of the *Code*. She further alleges that no preventive measures were taken after she made her complaint against the deputy warden and that no formal investigation was conducted, as required under "section F of the regulation [*sic*]."

[23] The employer submits that the grievance essentially alleges non-compliance with statutory obligations under the *Code* and the *WPHVP Regulations*. I agree. The grievance does not challenge the alleged harassment itself but rather the employer's failure to meet its obligations under the *Code* and its *WPHVP Regulations*.

[24] The bargaining agent maintains that the grievance concerns the interpretation and application of the collective agreement. When it referred the grievance to adjudication, the bargaining agent raised, for the first time, a breach of article 18 ("Health and Safety") of the collective agreement, as the subject matter of the dispute. Article 18 requires the employer to "… make reasonable provisions for the occupational health and safety of employees" and consult the bargaining agent, to adopt "… procedures and techniques designed or intended to prevent or reduce the risk of employment injury or illness."

[25] In her grievance, the grievor states that she was exposed to a known hazard and that no action was taken to address it. She also alleges that no investigation was conducted, as required by the *WPHVP Regulations*. The grievance that was presented throughout the grievance process did not indicate that article 18, or any other collective agreement provision, was engaged.

[26] While referring to a specific collective agreement article is not always necessary, in this case, the addition of article 18 at the referral to adjudication changed the grievance's essential character and therefore contravened the *Burchill* principle, which requires that a grievance's substance be identified at its initial presentation, to ensure procedural fairness and to allow for proper consideration throughout the grievance process. Notably, the *Burchill* principle is compatible with the statutory requirements under ss. 209(1) and 225 of the *FPSLRA*, which mandate that a grievance must be

presented through all the required levels of an internal grievance process before it may be referred to adjudication.

[27] In its first-level response, the employer indicated that it had offered post and roster adjustments to eliminate exposure to the identified hazard and that it had invited the grievor to pursue resolution through the Office of Informal Conflict Resolution, which she allegedly declined. The employer further stated that it investigated the matter and found no basis to uphold the grievance. Although the employer's responses do not reference the *Code* or the *WPHVP Regulations*, it appears that its actions were guided by those statutes. There is no indication that the employer was aware or that it could have anticipated that article 18 of the collective agreement was being invoked.

[28] In *Boudreau v. Treasury Board (Department of National Defence)*, 2010 PSLRB 100, the former Board examined a case in which a clause similar to article 18 was raised at adjudication. At paragraphs 34 and 35, it observed that the interpretation or application of the collective agreement was not central to the original grievance or to the discussions throughout the grievance process. It further held that "[a]s a general rule of natural justice, the employer should not at adjudication be required to defend against a substantially different characterization of the issues than it encountered during the grievance procedure." The Federal Court upheld that decision in *Boudreau v. Canada (Attorney General)*, 2011 FC 868 (see paragraphs 19 and 20).

[29] Likewise, in *Wepruk v. Treasury Board (Department of Health)*, 2016 PSLREB 55, the former Board assessed an objection to its jurisdiction over a grievance involving a clause similar to article 18. Although the grievance referenced the collective agreement and the harassment prevention policy, it did not cite a specific provision. The bargaining agent argued that its communications with the employer made it clear that harassment was central to the grievance. However, the Board found that the employer could not reasonably have understood that the occupational health and safety provision was at issue (see paragraphs 38 and 39).

[30] Having determined that raising a breach of article 18 at the adjudication stage changes the essential character of the grievance and therefore contravenes the principle established in *Burchill*, I find that I lack jurisdiction to hear and decide the

grievance. As a result, I am without jurisdiction to consider the remaining aspects of the employer's preliminary objection and the grievance's merits.

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

(The Order appears on the next page)

VII. Order

[32] The employer's preliminary objection is granted.

[33] The grievance is denied.

November 26, 2025.

Goretti Fukamusenge,
a panel of the Federal Public Sector
Labour Relations and Employment Board