

Date: 20251125

File: 566-02-50057

Citation: 2025 FPSLREB 156

*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

SCARLETT KELLY

Grievor

and

TREASURY BOARD

(Department of Foreign Affairs, Trade and Development)

Employer

Indexed as

Kelly v. Treasury Board (Department of Foreign Affairs, Trade and Development)

In the matter of an individual grievance referred to adjudication

Before: Guy Grégoire, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Philippe Chrétien, Canadian Association of Professional Employees

For the Employer: Feriel Latrous, counsel

Heard by videoconference,
October 14 and 15, 2025.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Scarlett Kelly (“the grievor”) joined Global Affairs Canada (GAC or “the employer”) in May 2023 and during the period at issue, acted in a senior analyst position. She was then, and still is, enrolled in a PhD program in the field of digital transformation and innovation. She sought from the employer a five-month leave from work in early 2024, to conduct field studies abroad related to her PhD program. It denied her request, citing operational needs. She then filed this grievance.

[2] For the reasons that follow, I concluded that this grievance must be denied, as the employer, on a balance of probabilities, established that operational requirements existed to support its decision to deny the requested leave.

[3] The hearing proceeded in a bilingual format, and at the grievor’s request, this decision was written in English.

II. Opening statements

[4] In her opening statement, counsel for the employer explained that the grievor was hired in May 2023 as an EC-05 and that she worked as a senior analyst, acting as an EC-06. She had been in that position for seven months when the events at issue occurred.

[5] In November 2023, the grievor expressed a desire to telework from abroad, to conduct field work related to her PhD program. At that time, her deputy manager consulted her Human Resources department (HR) and her senior management and concluded that the request could not be approved, as the grievor’s request did not meet the required *GAC Telework Guidelines* (“the Guidelines”). In December 2023, the grievor requested leave without pay (LWOP) for personal reasons; it too was denied due to operational requirements.

[6] In January 2024, management offered the grievor a longer LWOP of up to two years, to allow the organization to hire another analyst to replace her, but she declined the offer. Hence, she filed this grievance.

[7] Counsel for the employer stated that management handled the request with diligence and that it rendered a decision that was fair and that was supported by the organization's operational needs.

[8] The grievor's representative stated that the grievance was referred to the Federal Public Sector Labour Relations and Employment Board ("the Board") based on s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and stated that the collective agreement between the Treasury Board and the Canadian Association of Professional Employees for the Economics and Social Science Services (EC) group, expiring on June 21, 2026 ("the collective agreement"), allows for LWOP for personal needs. He stated that the grievor began working at GAC on May 15, 2023, and that she was mainly hired to work on the Management Accountability Framework (MAF). However, later in May, the Treasury Board Secretariat (TBS) issued a 12-month pause on the MAF.

[9] He stated that the grievor requested to telework from January to June 2024 but that it was refused on December 4, 2023. Then, on December 5, 2023, she asked for education leave for the same period, and it too was denied. Finally, she asked for LWOP for personal needs on December 13, 2023. It too was denied based on operational requirements. The grievance is against the decision to deny the grievor LWOP for personal needs.

[10] The grievor's representative stated that management offered the grievor 12 months plus 1 day of leave but that that was 7 months more than what she requested. She eventually left on sick leave from January 10 to June 12, 2024. He stated that the employer claimed to have structural staffing issues and that it staffed her position only in 2025. The oral evidence disclosed that the position was staffed on an interim basis in 2024 and on an indeterminate basis in 2025.

[11] He claimed that since the MAF was on pause, management could have granted the grievor's requested leave. He claimed that the employer failed to demonstrate how her absence would have been a nuisance to its operation or how her presence was an obligation, considering the operational necessities. He claimed that management wanted to get rid of her, so it could replace her. The grievor seeks damages, among other remedies.

III. Summary of the evidence

A. For the employer

1. Mia Mouelhi, Deputy Director

[12] Counsel for the employer called Mia Mouelhi, Deputy Director of the Performance Management Unit (“the unit” or “the team”) within GAC’s Corporate Planning and Reporting Bureau. She was the grievor’s direct supervisor when the events at issue took place.

[13] She testified that she manages a small team of analysts responsible for corporate reporting. It is composed of analysts classified at the EC-05 and EC-06 group and levels. One analyst is considered a free agent and acts in an EC-05 position. The grievor was recruited in May 2023 at her substantive EC-05 group and level but acted in the EC-06 position. The plan was to appoint her to the substantive EC-06 position as soon as it was free since at that time, it was filled by someone waiting to be deployed.

[14] The grievor had previously qualified in an EC-06 pool and was hired from the TBS into a bilingual non-imperative term position within Ms. Mouelhi’s organization. As mentioned, she acted in the EC-06 position on her arrival. When, in November, the grievor achieved her bilingual requirement, her term appointment was prolonged to one year, as she was still waiting for the EC-06 position to be vacated.

[15] The grievor was hired as one of two senior analysts. Ms. Mouelhi stated that her organization is flat, in which every member of her group works very collaboratively, and everyone leads and helps others. She stated that the grievor led the MAF account, to comply with TBS reporting requirements, and that it was gearing down.

[16] The grievor was also to start a new supplemental information table and a *Departmental Reporting on Results* report (DRR). The DRR is a spring-to-fall process that begins in February. She did not lead the narrative but did lead the supplemental information table. This encompassed over 200 pages of payment transfers, 30 to 40 programs, and a gender-based analysis. Ms. Mouelhi explained that GAC encompasses 3 departments: Foreign Affairs, International Trade and International Development.

[17] Ms. Mouelhi explained the grievor’s role and responsibilities within the team. She supported the departmental reporting responsibilities either as a leader or a contributor to several corporate reports, such as a supplemental information table, a

gender-based analysis, a horizontal analysis, and an all-indicators analysis. She contributed to their coordination and reviews for quality assurance and submissions to the TBS.

[18] Ms. Mouelhi testified that she did not know of the grievor's awareness of all the corporate reporting requirements to come. She believed that the grievor focussed more on the MAF and that as a new GAC employee, she might not have known all its departments and their requirements in terms of corporate reporting. She stated that there was significant development into her senior analyst role. She stated that GAC is a big department and that it would have taken some time for the grievor to grasp all its components.

[19] She testified that the grievor expressed her interest in teleworking from abroad in November 2023 in an email. She forwarded it to the HR telework team. HR replied that the grievor's request did not meet the Guidelines' minimum requirement. She further testified that she reviewed the Guidelines and discussed them with HR, which explained why the grievor's request did not meet them. She then discussed the issue with her Director General (DG) and had a bilateral meeting with the grievor toward the end of November, to explain the denial.

[20] Ms. Mouelhi stated that the grievor expressed disappointment that GAC would not support her teleworking abroad. She stated that at that time, she was unaware of any health issue that the grievor might have had. She turned to the Guidelines, to the "Special Considerations Outside of Canada" section. She indicated that the Guidelines applied to Canada-based staff, to those employed by GAC, among others, at its headquarters. The Guidelines stated that teleworking from outside Canada was strictly limited to exceptional circumstances. She stated that the grievor did not meet the Guidelines' requirements for teleworking outside Canada. Ultimately, the DG was the decision maker. She added that security reasons were also involved since the grievor had secret clearance and worked on such files, which would have constituted an added risk. In any event, the present grievance deals only with the refusal of the LWOP and not the refusal of her telework proposal.

[21] She stated that that information was communicated to the grievor in an email dated December 4, 2023. In the email, she invited the grievor to seek other possible leave offered under the collective agreement, such as for educational purposes or

LWOP for personal reasons. She further wrote that she was "... reflecting on how this potential absence will affect the operational requirements of our unit."

[22] Ms. Mouelhi testified that she responded to the grievor's several leave requests, both educational and personal, and that she discussed each one with her DG. She considered her operational requirements to deliver on her mandate. She tried to see if someone else could take on the grievor's work. She concluded that she would likely have to hire someone from outside the organization into the grievor's position.

[23] Ms. Mouelhi considered the impact on the grievor if her request were denied and looked into the options that the collective agreement offered. She considered the cost implication of the educational leave and the link between the subject of her study and the unit's work. She stated that there was a cost attached to a LWOP for educational reasons in terms of an allowance to be paid as prescribed by the collective agreement, at the employer's discretion. In terms of the link, the study had to be linked with the work performed, and in this case, she did not see the link. The studies were related to data-security innovation.

[24] When she considered LWOP for personal reasons, Ms. Mouelhi testified that her unit would not have been able to deliver her mandate for such a long absence or manage the work without the second senior analyst. She considered the impact of the absence on the other members of her unit and the increased work that it would generate for them. She testified about her inability to staff quickly, as had been the case historically. She looked at the past pool of qualified EC-06 candidates, but no one was available. She testified that the impact of the grievor's absence would have been serious, given the small size of her unit.

[25] She testified that the purpose of hiring the grievor was to fill a critical position and for her to act as a pillar and close a critical gap in Ms. Mouelhi's unit. With the grievor's presence, the unit was able to close major files, and the new year brought new programs to manage. She reiterated that without the grievor, she would not have been able to deliver essential reports on time; she had a staffing shortage, and no one could step in and hit the ground running.

[26] Ms. Mouelhi testified that the grievor began working in the unit in May 2023, was still developing into the senior analyst role, and had benefited from a one-month telework opportunity in Quebec, to allow flexibility with her studies. The grievor was

going through the normal progression in her position. She stated that an absence of five months would have affected the grievor's understanding of her files, as she would not have managed the processes, participated in meetings, or contributed to gathering information.

[27] She testified that the grievor left on sick leave from January to March and then again until June 2024. She did not know when the grievor would return. In effect, she never returned to GAC. She accepted a position with a different department, Indigenous Services Canada (ISC). She signed the offer letter on June 12, 2024.

[28] Ms. Mouelhi was referred to her email chain with the grievor that began on June 7 and ended on June 12, 2024. In the first email, she wrote that it had been a while since they had spoken and stated that she wanted to know how the grievor was doing and wondered if she intended to prolong her sick leave. In reply, the grievor stated that she was doing better, and she offered that they have a chat. She advised that she was ready to return to work. On June 10, the grievor wrote to Ms. Mouelhi, informing her that she was ill and that she could not come back to work. Finally, on June 12, Ms. Mouelhi was informed that the grievor had accepted another position.

[29] Ms. Mouelhi stated that the grievor's absence had a huge impact on operations and that some processes were delayed. She stated that some things fell to the side, due to prioritization. It also caused an enormous burden on the remaining staff and on her since they had to work overtime, including on weekends and holidays.

[30] Ms. Mouelhi testified that she became aware of the grievor's health issue that lead to her taking sick leave on December 18, 2023 and described how she came to this awareness, the details of which have no impact on this decision.

[31] When Ms. Mouelhi became aware, she brought it up with her DG and contacted the Employee Assistance Program (EAP), and she invited the grievor to also contact the EAP. Ms. Mouelhi later contacted the grievor at home for a wellness check, which contact was not well received by the grievor. She testified that she had had no prior indication of the grievor's situation. Once she was aware, she stated that her priority was the grievor's well-being, and she still searched for a solution to the grievor's LWOP request.

[32] When the grievor left on sick leave in January 2024, Ms. Mouelhi was still struggling to find someone to replace her. Only in May 2024 was she able to hire someone into the EC-06 position on an interim basis.

[33] Ms. Mouelhi testified that management made different proposals to the grievor to address her LWOP request, such as leave from January to February that could have worked, but not from March to April. The grievor could not change her dates. Then management offered her LWOP for a year plus one day and affirmed that that would have allowed her to attend to her studies and enabled the organization to try to staff her position, to meet its corporate needs. Ms. Mouelhi stated that it is difficult to attract someone to such a position for just a short period.

[34] Ms. Mouelhi stated that she believes that management did all it could to help the grievor and to ensure the delivery of its mandate. She summarized management's efforts, stating that its members discussed each leave request, encouraged the grievor to make a stronger case, and encouraged her to meet with the DG. Management contacted HR with each request and ensured that each one was followed up diligently. The grievor met with the DG on December 22, 2023.

[35] On cross-examination, the grievor's representative referred Ms. Mouelhi to her organizational chart ("the org chart"). She testified that the EC-05 position was the free agent position and that all the boxes on the chart did not represent all the positions in her organization. She claimed that her unit was understaffed for years.

[36] He returned to the employer's January 8, 2024, offer to the grievor of a longer LWOP and asked about the grievor's status upon her return from such a long leave. Ms. Mouelhi stated that the grievor would have been placed on a priority list. She confirmed that the DG made the offer and that even though her name appeared in the email's signature block, the DG sent it. She also recognized that the grievor would have been without pay for a longer period than she requested.

[37] The grievor's representative referred Ms. Mouelhi to the December 20, 2023, letter offering the grievor an acting assignment to March 31, 2024, and asked why the letter was sent two days after her LWOP request was denied. Ms. Mouelhi testified that it could not have been sent earlier because management was waiting for the grievor to meet the language profile requirements.

[38] He debated with Ms. Mouelhi as to whether the DRR could have started in February or March, but Ms. Mouelhi maintained her position and I do not find that her testimony was shaken or discredited. He also put to her that since the MAF was paused, the workload had reduced. She stated that indeed the workload related to the MAF had reduced but that it had not reduced the team's overall workload that in fact was increasing. Specifically, the grievor led the gender-based analysis.

[39] He referred to Ms. Mouelhi's December 18, 2023, email explaining the denial of the grievor's request. Ms. Mouelhi stated that no one could do the work and that it became her responsibility to deliver it, which she did by working overtime. That was not a sound management decision to make in the circumstances. Everyone in the team had to carry the extra work.

[40] He then referred to the grievor's January 10, 2024, email, to which she attached her doctor's note to the list of the files that she was working on. Ms. Mouelhi stated that those were files and that they were not representative of the grievor's workload.

2. Laura Smallwood, Director General

[41] Counsel for the employer asked that the Board receive by affidavit the testimony of Laura Smallwood, Director General, Corporate Planning, Performance and Risk Management. With the grievor's consent, permission was granted. The grievor cross-examined the witness in writing. Both documents were entered into evidence.

[42] Ms. Smallwood testified that the performance team is small; it has three or four analysts, and it has been chronically understaffed. The analysts' skill set is quite specialized and is in high demand throughout the federal government, which makes staffing those position always challenging.

[43] In the fall of 2023, Ms. Smallwood was informed of the grievor's request for educational leave, to pursue her PhD studies. Although she recognizes the value of continued education, she did not consider the grievor's PhD studies to be aligned with the operational needs of her substantive work, which was corporate in nature.

[44] Ms. Smallwood stated that granting the grievor leave at that time would have been highly disruptive, as the team was already understaffed, and the grievor's extended leave would have further strained the remaining team members. The grievor raised the possibility of teleworking internationally, but that was permissible only

under exceptional circumstances. Although the grievor did not meet the Guidelines' requirement, Ms. Smallwood did not consider voluntary doctoral research, unrelated to her team's work, to constitute exceptional circumstances justifying teleworking internationally.

[45] Ms. Smallwood stated that she tasked Ms. Mouelhi to research the applicable criteria, and she presented options. They reviewed the draft response and concluded that neither educational leave nor LWOP could be supported without a significant impact on operational requirements. She stated that they indicated that, had the grievor sought a longer LWOP, they could have considered backfilling her position.

[46] Ms. Smallwood stated that the grievor was extremely upset with the refusal of her request and indicated that she had already purchased her ticket to pursue her studies. No one was aware of any health concerns related to the grievor, but once they were made aware, she and Ms. Mouelhi contacted the EAP and other resources, to seek advice on how to respond appropriately. On January 10, 2024, the grievor went on sick leave, and she filed this grievance on January 17, 2024. She does not know if the grievor pursued her studies during her absence.

[47] She wrote that the grievor's expected return from sick leave was June 10, 2024. On June 7, 2024, the grievor confirmed by email that she would be ready to return on June 10. However, on June 12, 2024, the grievor shared a signed letter of offer with ISC and advised the employer that she would not return to GAC. Her position was eventually staffed on an indeterminate basis in January 2025.

[48] In paragraph 24 of her affidavit, Ms. Smallwood wished to clarify why she did not consider the grievor's field of study relevant to the employer's operational needs. She listed five core responsibilities of her section and indicated that they were corporate in scope. She recognized that the grievor's field research, while important on its own, was not aligned with the team's mandate.

[49] She stated that she disagreed strongly with the grievor's statement that she would not have had significant deliverables during that period. She claimed that the grievor was relatively new on the team and that she was not yet experienced with the winter's workload cycle, which included major deliverables.

[50] Ms. Smallwood claimed that when she assessed the grievor's educational LWOP and requests to telework internationally, she considered both the grievor's personal circumstances and the team's operational needs. She concluded that the grievor's absence would have been untenable, given the chronic staff shortage, the critical timing of performance deliverables, and the lack of alignment between the grievor's studies and the operations.

[51] The cross-examination was done in writing. I will summarize the questions and answers that I find relevant to the issue. The document was also entered into evidence.

[52] Ms. Smallwood stated that she could not recall which core activities were assigned specifically to the grievor but added that while there are leads on some activities, several analysts are required to contribute to many activities. She confirmed that the MAF was put on hold, but the TBS was not clear about how departments were to be responsible for interim measures.

[53] Referring to the chronic staffing issue, Ms. Smallwood wrote that it is not exclusive to GAC and there is a highly competitive environment across the federal government. She stated that to hire staff, the employer often had to offer full-time indeterminate appointments or promotions. Questioned about the offer to the grievor of leave for more than one year, she stated that it would have created the possibility of finding someone at level without running a full staffing process.

B. For the grievor

[54] The grievor testified that she is currently employed at ISC as a senior analyst at the EC-06 group and level and that she began in that role in July 2024. She holds a secret security clearance. Her PhD field of studies is digital transformation and innovation and was still underway when this decision was prepared.

[55] She testified that she gained MAF skills by working two reporting cycles at the TBS and by being the contact for numerous departments, of which GAC was one. She was responsible for seven areas. GAC hired her because of her MAF knowledge gained by having worked with Ms. Mouelhi and Ms. Smallwood while she was at the TBS.

[56] She testified that she also worked on the DRR and that she did not create the data but compiled it. She stated that the TBS issued the dates for the DRR in the summer of every year and that the deadlines were set for November or December. The

DRR report is for the previous fiscal year. She stated that in May 2023, the data had not arrived yet, and she stated that she believed that there were no reasons to believe that it would have been different for 2024.

[57] She testified that she led the MAF exercise, which is why she was hired. As for the DRR, no one leads it; she was in a coordinator role. She agreed with Ms. Mouelhi's statement about the MAF in that it was very busy in the fall, with a preliminary report in February and a final report in April. However, she stated that at that time, the MAF was on pause, and that it generated very little work. The DRR too generated little work. In effect, she stated that between January and May, she had no work.

[58] She testified about the gender-based analysis, stating that she had heard about it but had received no instructions about it, and it did not appear to be as much work as it seemed.

[59] Referring to management's offer to the grievor to take a longer-than-requested LWOP, the grievor claimed that it did not bother with her financial situation. She claimed that it was like a slap in the face. She stated that working from abroad with secret documents should be the norm at GAC. She claimed that she provided management with many options for her leave and that they were all denied. She claimed that it was just trying to get rid of her. She stated that staffing her position would have taken more time than her requested leave.

[60] Referring to the list of files that she worked on, she claimed that it represented basically nothing; there was nothing to take over from her during her absence.

[61] In cross-examination, the grievor confirmed that in November, when she began speaking about teleworking internationally, her tickets had already been purchased, and she stated that she would proceed with her studies, despite management's reply to her request. She testified that she did not receive the Guidelines and that she found that management made too many excuses. She stated that the exceptional-circumstances criteria that applied to employees should also apply to management. She agreed that had the MAF not been paused, the circumstances would have been different.

[62] She reiterated that when management offered her a longer LWOP, it was done just to get rid of her. She agreed that before December 2023, no one knew about her

state of health. She stated that she does not remember whether management referred her to the EAP. She stated that Ms. Mouelhi called her in the evening, at home, “out of the blue.” She claimed that Ms. Mouelhi had no authorization to call her at home; “it too was a slap in the face, and it was not a good check on me.” She claimed that she sent her email at around 14:00 and that she stayed in the office until 16:00, which provided Ms. Mouelhi ample time to talk with her.

[63] She confirmed that she left on medical leave in January 2024 and that she started her new job in June 2024. She also confirmed that her PhD program was not yet completed. When asked if she had completed her field study abroad while on sick leave, she refused to answer on the basis of privacy, and simultaneously, her representative objected to the question. It was left unanswered.

IV. Summary of the arguments

A. For the employer

[64] Counsel for the employer stated that management presented credible evidence, including that the team was small, with four or five analysts, that its programs followed strict deadlines, and that spring is a busy period. Ms. Mouelhi confirmed that the grievor was hired for the MAF but that the grievor was mistaken to believe that because the MAF was paused, the workload would be light. She was to lead the estimates. She had never worked the spring period and had an incomplete expectation of the team’s workload.

[65] Counsel for the employer stated that management consulted HR and the Guidelines but that the grievor did not meet the required criteria. She sought other leave; the education leave required an allowance and did not meet the policy, as Ms. Smallwood testified in her affidavit, and her LWOP request was also denied because granting it at that time would have been highly disruptive to the team.

[66] Management’s decision was communicated to the grievor on December 18, 2023, and she became unwell and was referred to the EAP. She became Ms. Mouelhi’s top priority, to help her with her situation.

[67] Counsel for the employer argued that management was still looking for options to the grievor’s request while considering its operational needs and that it offered her

LWOP of more than a year, to allow her to leave and it to backfill the position. She declined and then left on sick leave.

[68] Counsel for the employer referred to clause 21.11 of the collective agreement, which stated that educational leave was subject to operational requirements. She submitted *Burgess v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2004 PSSRB 164, which defined operational requirements as more than just a constraint but instead genuine requirements for an employee to remain present at work. She argued that the unit operated with a minimal number of staff members and that it dealt with real time-sensitive needs.

[69] She then turned to *Treasury Board (Agriculture Canada) v. Nichols-Nelson*, 1991 CarswellNat 1967, and distinguished it from this grievance since the employer in that case weakened its position by not seeking alternatives to that grievor's situation. In this grievance, management consulted HR; it sought alternatives and made a genuine good-faith effort to support the grievor's request.

[70] Counsel for the employer cited *Ferguson v. Treasury Board (Statistics Canada)*, 2009 PSLRB 21, and *Edwards v. Treasury Board (Canada Border Services Agency)*, 2019 FPSLRB 62, and claimed that management's decision was based on the existence of operational requirements and that my decision had to be based on the evidence before me.

[71] She argued that taken together, those cases provide a clear understanding that the decision must be made in good faith and that there is no requirement for management to re-engineer its operations. She stated that Ms. Mouelhi consulted HR and her DG, who ultimately made the decision to deny the leave request, based on genuine operational requirements, and they made more than minute efforts to find alternatives. Management's decision is supported by the evidence, as the team was about to enter its busiest period of the year. Counsel stated that GAC took concrete steps when it hired the grievor, to meet its legitimate needs that went beyond contributing not only to the MAF but also to all corporate reporting requirements.

[72] Counsel for the employer claimed that as in *Burgess*, management's decision was not arbitrary; it considered the operational requirements and was consistent with the Guidelines and the collective agreement. The grievor made no allegations of bad faith or discrimination. She claimed that it was not a case of management's

indifference but a careful exercise of discretion, as expected in clause 21.11 of the collective agreement, which speaks of the employer's discretion and not an employee's entitlement. She asked that the grievance be denied.

B. For the grievor

[73] The grievor's representative argued that her request respected clause 21.11 of the collective agreement. He stated that she made management aware of her intention to request educational leave in January 2024 and that neither the collective agreement nor the Guidelines spoke of a minimum delay between a leave request and the actual leave. He argued that nothing forced management to replace the grievor on January 12; it could have waited a few weeks or even a few months.

[74] He argued that the LWOP for more than a year was to be used to replace the grievor in her substantive EC-05 position, not her acting EC-06 position. He claimed that there was another free EC-05 position, according to the org chart, which management could have staffed without jeopardizing the grievor's position. He argued that by refusing, it demonstrated management's intention to get rid of her and to place her on a priority list. He argued that the free agent's position could have been used to provide an acting assignment, as it too was vacant. Furthermore, he stated that the collective agreement did not envisage offering LWOP of longer than a year.

[75] He argued that the DRR process was to begin in the spring, soon after the grievor's return from her requested leave. He stated that the MAF was on pause, so it followed that there would be less work than expected and argued that afterward, it was easy to blame the grievor's absence for the increased workload on the other team members.

[76] He addressed the employer's claim that the unit was chronically understaffed. He argued that that had been ongoing for 20 years and asked what had been done to resolve it.

[77] The grievor's representative submitted both *Canada (Attorney General) v. Degaris*, [1994] 1 FC 374 (T.D.); and *Degaris v. Treasury Board (Transport Canada)*, Board file nos. 166-02-22490 and 22491 (19930104). He argued that the employer had to follow the collective agreement and that it could not just rely on operational requirements or chronic staff shortages to deny the leave request. He claimed further

that no extraordinary circumstances would have justified the employer's refusal. He further submitted *Dufour v. Treasury Board (Department of Human Resources Development)*, 2004 PSSRB 123, stating that it is different from this case and that the employer failed to specify the negative impacts resulting from the grievor's absence.

[78] He submitted *Power v. Treasury Board (Transport Canada)*, Board file no. 166-02-17064 (19880225), arguing that the employer did not establish that it faced compulsory requirements in exceptional circumstances to deny the request. He referred to *Noakes v. Treasury Board (Transport Canada)*, Board file no. 166-02-09688 (19820111), pertaining to the lack of personnel.

[79] He argued that in cross-examination, Ms. Smallwood could not recall the work accomplished but remembered that the employees had to work overtime. He claimed that there was no documentary evidence of the operational requirements that were cited to deny the grievor's request. He argued that the employer should have submitted TBS deadline dates to support its operational requirements claim. As such, he argued that no particular activities were identified and that the DRR requirements were from spring to November but began in February. He suggested that those tasks were feasible if employees were made to work overtime. He acknowledged that some TBS dates were not met but that at the relevant time, no one knew that those requests were forthcoming.

[80] He submitted *Campione v. Canada Revenue Agency*, 2013 PSLRB 161, and *Morton v. Treasury Board (Agriculture Canada)*, Board file no. 166-02-14208 (19840409), arguing that a serious analysis of the operational requirements had to have been conducted to conclude that the requested leave could not be granted. He claimed that the employer's burden is to establish the operational or budgetary requirements that prevented granting the leave.

[81] He submitted Brown and Beatty, *Canadian Labour Arbitration*, 5th ed., paragraph 7:20, entitled "Leave of Absence", and claimed that employers cannot deny leave simply based on principles such as that it might open a floodgate of leave requests, without evidence of how their operations would be negatively impacted. He argued that in this case, the grievor's leave to study abroad constituted a once-in-a-lifetime opportunity.

[82] He argued that *Burgess* is distinguishable since the employer did not establish its operational requirements or that there was a chronic lack of personnel. He claimed that a personnel shortage in the short term could not be blamed since the unit had been understaffed for the previous 18 years.

[83] In summary, he argued that the MAF was on pause, the unit suffered from chronic understaffing, the grievor had very little work to accomplish, the employer suggested a LWOP not covered by the collective agreement that was even longer than what she requested, the employer did not have to replace her position because there was another vacant position in the unit, the employer failed to show the important workload that it alleged existed, and no exceptional circumstances justified refusing the grievor's leave request.

[84] He stated that the grievor fell ill for 5 months and that she seeks the reimbursement of her sick leave, \$45 000 for moral damages and stress, and a declaration that employer contravened the collective agreement. In closing, he stated that the grievor did not resign from GAC; she accepted another position at a different federal government department.

C. The employer's rebuttal

[85] In rebuttal, counsel for the employer stated that the leave was not denied to get rid of the grievor but was related to operational requirements. She argued that the offer of a longer LWOP to the grievor is not the subject of this grievance and that the grievor was not imposed on or coerced to accept the offer. She stated the employer's conduct was the opposite of an ill-intent approach to the situation and that it explored alternatives in good faith.

[86] The employer's counsel argued that the standard that I should consider is reasonableness, not the impact of the maximal circumstances. TBS deadlines caused risks to three departments, Parliament, and the media. She stated that the EC-05 position that the grievor occupied was ultimately filled in January 2025. The employer's decision was not arbitrary; it was reasoned.

V. Reasons

[87] The LWOP legal framework related to the grievor's request is found at clause 21.11 of the collective agreement that states the following:

21.11 Leave without pay for personal needs

Leave without pay will be granted for personal needs in the following manner:

a. Subject to operational requirements, leave without pay for a period of up to three (3) months will be granted to an employee for personal needs. Leave granted under this clause shall be counted for the calculation of continuous employment for the purpose of calculating severance pay and service for the purpose of calculating vacation leave. Time spent on such leave shall be counted for pay increment purposes.

b. Subject to operational requirements, leave without pay for more than three (3) months but not exceeding one (1) year will be granted to an employee for personal needs.

...

21.11 Congé non payé pour convenance personnelle

Un congé non payé est accordé pour les obligations personnelles, selon les modalités suivantes :

a. sous réserve des nécessités du service, un congé non payé d'une durée maximale de trois (3) mois est accordé au fonctionnaire pour des raisons de convenance personnelle. Le congé accordé en vertu du présent paragraphe est compté dans le calcul de la durée de l'« emploi continu » aux fins de l'indemnité de départ et du « service » aux fins du congé annuel. Le temps consacré à ce congé est compté aux fins de l'augmentation d'échelon de rémunération;

b. sous réserve des nécessités du service, un congé non payé d'une durée de plus de trois (3) mois mais ne dépassant pas un (1) an est accordé au fonctionnaire pour des raisons de convenance personnelle;

[...]

[88] That clause discusses two types of LWOP, which are for less or more than three months. Both paragraphs begin with the words, “Subject to operational requirements”. The facts of this case indicate that the employer considered the grievor’s request and its operational requirements based on its operations and the human resources in its team. Ultimately, it concluded that it could not grant the leave as requested, based on operational needs.

[89] In her argument, through her representative, the grievor argued that while the employer had sought to establish that operational requirements prevented it from granting her requested leave, that evidence was not sufficient and maintained that exceptional circumstances were required for the employer to refuse the leave. I disagree and find that the employer’s argument with respect to its obligations under the collective agreement is to be preferred.

[90] I concur with the conclusions in *Burgess* that operational needs differ from operational constraints. At paragraph 23, it quoted from *Nichols-Nelson* that the phrase “operational requirements” implied an amount of work to be performed by the grievor that prevented approving the leave. It stated, “It is not for me to substitute my judgement for that of the employer ...”. I agree.

[91] In this case, management, through Ms. Mouelhi and Ms. Smallwood, established that those operational requirements existed, either through the DRR project or other corporate reporting that had to be completed. I also accept management’s evidence to the effect that the grievor possessed important and specialized skills that were vital to the smooth functioning of the team and hard to replace through staffing. I also prefer the employer’s evidence to the effect that a busy season was expected during her requested period of absence, as opposed to her testimony that she had little work at all. The employer’s testimony was thoughtful and detailed and remained unshaken on cross-examination.

[92] Although the grievor was unsatisfied with management’s reasons, I cannot substitute my opinion for that of management. I have no grounds on which to do it. For example, while the grievor repeatedly alleged that the employer had acted as it did in an effort to get rid of her, the evidence on that issue was solely her testimony as her feelings on this issue. No concrete evidence was entered, and I found that the employer’s witnesses demonstrated no negativity towards her that would raise suspicions on this issue.

[93] The preponderance of the evidence in this case is that management considered its operational requirements, and the human resources required to accomplish its mandate. While I am sympathetic to the grievor’s argument of the unit’s chronic understaffing, I cannot find that the grievor has met their burden on this issue. The unit was made up of four or five members, of which she was one, with pointed expertise, that was required with respect to priorities and responsibilities that were set to arise during her requested period of absence.

[94] The employer testified that she would be nearly impossible to replace for such a short-term leave but also proved that it had consulted the pool of qualified candidates and found nobody. The evidence was also to the effect that it took the employer until January 2025 to staff the position and given the fact that the grievor lead no evidence

alleging that the employer had delayed in staffing her position, I can only conclude that the employer's fears regarding replacing her were borne out. On the balance of probabilities, the evidence confirmed that the employer came to a reasonable conclusion that it could not grant the grievor's requested LWOP.

[95] In her testimony and argument, the grievor made a series of suggestions as to how management could have done different things to allow her to take the LWOP. However, all those suggestions would have impeded on management's rights and did not impugn the reasonableness of management's decision. It is within management's prerogative to determine how its operations are to be managed and to determine the resources required. Unless a violation of the collective agreement is demonstrated, based on the balance of probabilities in a grievance such as this one, I cannot substitute my opinion for that of management.

[96] The employer explained that letting the grievor take leave for five months would have rendered backfilling her position very difficult and would have left the operations in a vulnerable state. Further, it stated that the other members had to work overtime to accomplish the work. The grievor's representative argued that working overtime is part of all employees' terms of employment, but management stated that it was not a viable option, and it could have led to burnout or other negative impacts on the staff members. I agree. The employer's decision on not forcing overtime on such a small unit of employees was not unreasonable and management is not required, under these circumstances, to have the grievor's work performed on overtime.

[97] I accept that the evidence established that the employer sought plausible alternatives to help the grievor, one of which was an offer of more than one year of LWOP. She argued that the collective agreement did not contemplate such leave. However, it did not prohibit making such an offer.

[98] I find that the offer was within the realm of reasonableness since it could have allowed the leave that the grievor requested and allowed the employer to make a better offer, to attract a replacement employee. I understand that it came with the inconvenience to the grievor of being on a longer LWOP, but other alternatives were open to her, such as finding another position in a different department. In effect, although it bears no consequence on the outcome of this grievance, this is what

happened. I do not find that it is evidence of the employer's alleged desire to get rid of her.

[99] I also find that the employer's reasons for denying the requested LWOP were well thought out and included no improper considerations. The evidence demonstrates that the request was not flatly denied but that the denial resulted from the Deputy Director consulting with HR and her DG and from analyzing the Guidelines. All that established that the request was considered, and that management's decision was not arbitrary. I find that it exercised its discretion with diligence.

[100] For those reasons, the grievance is denied. Given my conclusion, I need not address the issue of remedy.

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

(The Order appears on the next page)

VI. Order

[102] The grievance is denied.

November 25, 2025.

**Guy Grégoire,
a panel of the Federal Public Sector
Labour Relations and Employment Board**