Date: 20251222

Files: 566-02-50212 and 50213

Citation: 2025 FPSLREB 176

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

GABRIEL LEBLANC

Grievor

and

DEPUTY HEAD
(Correctional Service of Canada)

Respondent

Indexed as
Leblanc v. Deputy Head (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Himself

For the Respondent: Mathew Yaworski, counsel

Decided on the basis of written submissions,
filed July 23, 2024, and July 21, August 12, September 14, 2025.

REASONS FOR DECISION

I. Introduction

[1] The grievor, Gabriel Leblanc, began working on October 19, 2019, as a general duty and relief instructor at the Dorchester Penitentiary in Dorchester, New Brunswick, with the Correctional Service of Canada (CSC). His employment was terminated during his one-year probationary period via a letter dated September 14, 2020. He filed this grievance in response, alleging that the termination of his employment was done in bad faith and that it was disguised discipline.

[2] After the grievance was referred to adjudication, the respondent objected to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") to hear it. It took the position that the referral was untimely, and that the grievance was not within the Board's jurisdiction under the provisions of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2, "the *Act*"). For the purposes of this decision, the term "respondent" designates the deputy head of the CSC.

[3] Asked for his position in reply to the respondent's objections, the grievor informed the Board that he was waiting for the results of an access-to-information and privacy (ATIP) request for documents related to his employment and termination.

[4] During a case management conference held on May 25, 2025, I explained to the grievor why waiting for the results of an ATIP request was not a reason for him to delay responding to the respondent's objections. Arrangements were made for the respondent to disclose to the grievor the documents that it intended to rely on. It made its written submissions on July 21, 2025; an extensive book of documents was attached.

[5] Twice, the grievor was given the opportunity to provide his response to the respondent's submissions; twice, he responded that he was still waiting for the results from his ATIP request. A final deadline for the grievor's submissions was set, and no reply was received.

[6] The grievance is denied. After summarizing the evidence before me and the steps that I took in the management of the case, I will explain why I did not accept waiting for the ATIP request results as an acceptable reason for the grievor to not provide a response to the respondent's objections to the Board's jurisdiction. I will

then review the legal principles that apply to rejections on probation and explain why I have allowed the respondent's objection to the Board's jurisdiction to hear this rejection-on-probation grievance.

II. The grievor's employment history

[7] I will briefly summarize the grievor's employment history, as documented in the respondent's submissions.

[8] The grievor was offered employment as a general duty and relief instructor via a letter of offer dated September 30, 2019. The position was classified at the GL-MAN-07 group and level and was represented by the Public Service Alliance of Canada (PSAC) within the Operational Services (SV) bargaining unit.

[9] The letter of offer indicated that the grievor would begin work on October 15, 2019, and that he was subject to a probationary period of 12 months. It indicated that a written performance agreement would be established and that his performance would be monitored.

[10] The grievor was subjected to an orientation process overseen by his supervisor, Serge Bourgeois. The grievor signed an orientation checklist, confirming that Mr. Bourgeois provided him with orientation to his performance management agreement, his work description, and his collective agreement, among other things.

[11] In January 2020, Mr. Bourgeois conducted a formal probationary period evaluation of the grievor. While several positive aspects of the grievor's employment and accomplishments were noted, several areas for improvement were identified, including operating snow removal equipment, completing preventative maintenance assignments, logging work hours, and monitoring and responding to emails.

[12] The respondent submitted emails that documented concerns that it expressed to the grievor about his time reporting on 8 occasions between January and March 2020, and about his completion of his duties on 20 occasions between January and July 2020.

[13] The respondent also submitted two letters from Mr. Bourgeois that warned the grievor that if his work performance did not improve, he faced being rejected on

probation. One letter was dated March 10, 2020, and the second was dated June 1, 2020.

[14] On July 8, 2020, the grievor received a "Did Not Meet" performance rating as part of his performance management agreement.

[15] In a letter dated September 14, 2020, the grievor's employment was terminated. He was relieved of his duties effective September 15, 2020, and was paid in lieu of notice until October 15, 2020. The letter explained that the grievor had not demonstrated that he could satisfactorily perform the duties of a general duty and relief instructor. It cited concerns about reliability, ability to meet work requirements, and ability to adhere to established policies, procedures, and practices. It noted that performance objections and expectations had been provided to him throughout his employment and that his supervisor had provided him with the procedures and tools required to meet his obligations.

III. Procedural history related to the grievance

[16] I will briefly summarize the procedural history related to the grievance.

[17] The grievance was presented to the respondent on September 25, 2020. It alleged that the respondent's decision to reject the grievor on probation was made in bad faith and that it constituted disguised discipline.

[18] The grievance was presented directly to level two of the grievance process. The respondent denied it at step two on October 21, 2020. It was transmitted to the third (and final level) on November 17, 2020.

[19] The grievance was referred to adjudication before the Board on July 10, 2024. The grievance referral form states that the grievor received a final-level reply on May 1, 2024. The respondent denied that a final-level reply was issued, and the grievor provided no document to indicate that one had been issued.

[20] The grievance was referred to adjudication under both s. 209(1)(b) (termination for disciplinary reasons) and (c) of the *Act* (termination for unsatisfactory performance). This resulted in the Board opening two files, respectively Board file nos. 566-02-50212 and 50213.

[21] As of the referral to adjudication, the grievor was represented by the PSAC.

[22] On July 23, 2024, the respondent raised its two objections. The first was that the grievor was terminated due to a rejection on probation under s. 62(1) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13, "the *PSEA*"); as such, it is not a grievance that could have been referred to adjudication under s. 209 of the *Act*. The second objection was that the grievance referral was untimely because it was transmitted to the final level on November 17, 2020, and left unanswered. The respondent took the position that it should have been referred to adjudication no later than January 25, 2021.

[23] On August 23, 2024, the PSAC advised that it would no longer represent the grievor.

[24] On August 27, 2024, by email, the Board's Registry asked the grievor whether he intended to represent himself and requested that he provide his response to the respondent's objections. He did not reply to that email.

[25] On January 15, 2025, the Board's Registry reached the grievor by telephone. He indicated that he would not provide any response to the Board until after he received documents from the respondent as part of his ATIP request.

[26] On April 2, 2025, I was assigned as the panel of the Board to consider the respondent's objections. I requested that the grievor provide written confirmation of his intent to proceed with his grievance and whether he would represent himself. I also indicated that a case management conference would be held to discuss how further submissions might be made on the respondent's preliminary objections.

[27] On April 12, 2025, the grievor wrote that he was still waiting on his ATIP request, which was made in 2020, before deciding whether to move ahead with his grievance.

[28] I convened a case management conference via the Zoom videoconferencing platform on May 25, 2025. The grievor explained that his ATIP request was for emails, phone, and text records related to the end of his employment. He said that an ATIP official had given him a timeline of from 4 months to 10 years to respond to his request.

[29] I explained that the Board has the ability to order the production of documents and that pursuant to its *Policy on the Prehearing Exchange of Document Lists*, the

parties had an obligation to exchange with each other a list of all arguably relevant documents related to the grievance at least 60 days before a hearing. I invited the respondent to consider generating its list of arguably relevant documents in advance of a written submissions process that I proposed to address its objections.

[30] On May 30, 2025, the respondent agreed to generate a list of arguably relevant documents and to produce them to the grievor by July 4, 2025.

[31] I then provided the parties with the following timeline for making written submissions on the respondent's objections, as follows:

> *• By **July 4, 2025**, the employer will disclose to the grievor all arguably relevant documents to the grievance.*
>
> *• By **July 11, 2025**, the grievor is to disclose to the employer any arguably relevant documents that he has in his possession, that are not in the employer's disclosure package.*
>
> *• By **July 21, 2025**, the employer shall make any further submissions related to its objections. It may attach to these submissions any documents disclosed between the parties and refer to them in its submissions.*
>
> *• By **August 15, 2025**, the grievor shall make his submissions related to the employer's objections. He may refer to the documents submitted by the employer, and may also attach any additional documents disclosed between parties, and refer to them in his submissions.*
>
> *• By **August 29, 2025**, the employer may provide any reply submissions to those of the grievor.*
>
> [Emphasis in the original]

[32] The respondent made its submissions on July 21, 2025. They focused entirely on the Board's lack of jurisdiction to render a decision on a grievance about a rejection on probation and did not address the timeliness issue further.

[33] On August 12, 2025, the grievor said that he had not yet received an answer to his ATIP request and that he would not be able to respond by the August 15 deadline.

[34] On August 26, 2025, a Board registry officer informed the grievor as follows:

> …
>
> *I am writing at the direction of the Board in follow-up to the correspondence from Mr. Leblanc of August 12, 2025, indicating*

> *that he is awaiting the results of an Access to Information (ATIP) requests and will therefore not be providing written submissions.*
>
> *The Board wishes to emphasize that at the Case Management Conference held on May 27, 2025, the Board explained it did not intend to suspend its ruling on the employer's objection pending the results of an ATIP request. The Board suggested that the employer could disclose all of its arguably relevant documents regarding this matter to the grievor. On May 30, 2025, the employer committed to making this disclosure, no later than July 4, 2025.*
>
> *…*
>
> *The grievor has raised no objections with respect to the documents provided to him by the employer. The Board will not suspend the written submission process pending the results of an ATIP request made by the grievor. The written submission process will continue as follows:*
>
> *By* ***September 15, 2025****, the grievor shall make his submissions related to the employer's objections. He may refer to the documents submitted by the employer, and may also attach any additional documents disclosed between* [the] *parties and refer to them in his submissions.*
>
> *By* ***September 29, 2025****, the employer may provide any reply submissions to those of the grievor.*
>
> *If the grievor makes no submissions by September 15, 2025, the Board may proceed to issue a decision on the employer's objection on the basis of its submission alone.*
>
> *…*
>
> [Emphasis in the original]

[35] On September 14, 2025, the grievor wrote to the Board, indicating that he was still pursuing his ATIP request and that he "… will be informing you of of [*sic*] a date to which atips [*sic*] will disclose my documents".

[36] In reply, on September 17, 2025, I again asked the Registry to inform the grievor that the written submissions process would not be suspended so that he could pursue his ATIP request and provided him with one final extension to respond to the respondent's objection, with a deadline of October 1, 2025. He was reminded a second time that in the absence of a response from him, the Board could issue a decision on the basis of the respondent's submissions alone. No reply was received from him.

IV. There is no reason to suspend the Board's process due to the grievor's outstanding ATIP request

[37] Federal government employees may make requests for information about themselves via the federal *Access to Information Act* (R.S.C., 1985, c. A-1) or the *Privacy Act* (R.S.C., 1985, c. P-21). Such requests are generally referred to as "ATIP" requests. Documents that an employee receives via an ATIP request may sometimes find their way in front of the Board as part of a party's book of documents.

[38] That said, the Board is not given powers to order a government institution to disclose documents to a government employee under the *Access to Information Act,* or the *Privacy Act*. Neither the *Act* nor the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365, "the *Board Act*") provide a direct role for the Board in the administration of those acts. Those acts provide for distinct complaint procedures, through the Office of the Information Commissioner of Canada and the Office of the Privacy Commissioner of Canada.

[39] That does not mean that the Board is without powers to order the production of documents. At s. 20(f) of the *Board Act*, the Board is granted this power, as follows:

20 *…*	***20*** […]
(f) *compel, at any stage of a proceeding, any person to produce the documents and things that may be relevant.*	***f)*** *obliger, en tout état de cause, toute personne à produire les documents ou pièces qui peuvent être liés à toute question dont elle est saisie.*

[40] The Board's *Policy on the Pre-Hearing Exchange of Document Lists* explains the mechanism for making such an order. It requires that the parties provide each other with a list of all arguably relevant documents at least 60 days before a scheduled hearing. Under the heading "Request to Produce Documents and Request for an Order to Produce Documents", it states as follows:

> *11. A party may deliver to any other party a "Request to Produce Documents" with respect to any document identified on that other party's Document List if it is identified as being in that other party's possession, power, or control. A party who has received such a request shall, within seven days, produce the documents requested to the requesting party, failing which the requesting party may contact the Board to facilitate that production.*

> *12. If a requested document is not in the possession, power, or control of the party that included the document in its Document List, the parties shall try to resolve the issue between them.*
>
> *13. The parties may contact the Board to request an "Order to Produce Documents" should they be unable to obtain a document through a Request to Produce Documents.*

[41] In advance of the case management conference held on May 27, 2025, the parties were advised that the Board would discuss with them "… how the parties might engage in an exchange of arguably relevant documents, pursuant to the Board's *Policy on the Pre-hearing Exchange of Document Lists*." A link to that policy was provided to them.

[42] During the case management conference, the Board also referenced its *Labour Relations Procedural Guide* and its *Guide to Hearings Before the Federal Labour Relations and Employment Board*, both of which also refer to the Board's ability to make orders for the disclosure of documents. The grievor was provided with access to those documents on the Board's website.

[43] Following the case management conference, the respondent agreed to produce a list of all documents in its possession that were arguably relevant to this grievance and to then provide them to the grievor. When it made its submissions to the Board on July 21, 2025, it included an extensive book of documents (25 tabs, totalling 134 pages). The grievor was initially given 3 weeks to respond to the respondent's submissions; he was later given an additional 4 weeks.

[44] At no point did the grievor object that the respondent had refused to disclose any documents to him. At no point did he make a request to the Board for an order to produce documents. In fact, at no point did he explicitly request that the written submissions process be suspended or put in abeyance. All he did was reiterate that he was awaiting the results of his ATIP request.

[45] Although the grievor did not explicitly do so, he implicitly requested that the Board accept an indefinite suspension of the deadline for his response to the respondent's objections.

[46] I do not find it appropriate to grant the grievor such an extension.

[47] Among other things, the preamble to the *Act* states that "… the Government of Canada is committed to fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment …". In my assessment, an indefinite suspension of the deadline for the grievor's response to the respondent's objections would not contribute to the fair, credible, and efficient resolution of this grievance.

[48] During the case management conference, the grievor indicated that he might have to wait 10 years to see results from his ATIP request. Placing the grievance in abeyance for an indefinite period is neither fair to the respondent nor efficient in terms of the Board's resources. Rather than participate in the Board's process, the grievor essentially decided to what is often termed 'go fishing' for documents via the ATIP process, in the hope that he might catch something that supports his grievance.

[49] I recognize that the grievor is representing himself in this matter. For that reason, at each stage, I ensured that he had access to the resources and guides on the Board's website. At the case management conference and in written communications, care was taken to clearly explain what was being asked of him.

[50] As a consequence of the case management process, the grievor was given full access to the documents that the respondent planned to place before the Board. He was given ample opportunities to provide the Board with his version of events and to make arguments as to why I ought to dismiss the respondent's objection to the Board's jurisdiction and hear his grievance. He chose not to. He has not provided the Board with any reason to grant him additional time, other than his outstanding ATIP request.

[51] I will not grant the grievor an extension for responding to the respondent's objection solely on the basis that he is waiting for the results of the ATIP request. As a result, I have decided to render a decision on the respondent's objection to the Board's jurisdiction on the basis of its submissions alone.

V. The legal principles that apply to rejections on probation

[52] The legal principles that apply to hearing grievances of employees whose employment ended during their probationary periods have been fully set out in two recent Board decisions that the respondent referred to in its submissions: *Holowaty v. Deputy Head (Correctional Service of Canada)*, 2022 FPSLREB 44 at paras. 6 to 15, and

Rukavina v. Treasury Board (Department of Western Economic Diversification), 2023 FPSLREB 4 at paras. 46 to 66.

[53] I will not repeat the Board's reasoning in *Holowaty* and *Rukavina* at length. In a nutshell, s. 211 of the *Act* states that the Board does not have jurisdiction over any termination of employment that takes place under the *PSEA*. A rejection on probation for employees of this respondent is a termination of employment under the *PSEA*. However, the case law has long recognized that the Board has jurisdiction to consider allegations that a rejection on probation was arbitrary, discriminatory, or in bad faith or was actually a camouflage or sham; see *Holowaty*, at paras. 9 to 10.

[54] The starting point for the Board's analysis is to consider whether the respondent can demonstrate the following four elements (from *Holowaty*, at para. 11; and *Rukavina*, at para. 55):

> …
>
> *1) that the employee was on probation;*
>
> *2) that the probationary period was still in effect as of the termination;*
>
> *3) that notice, or pay in lieu of it, was provided; and*
>
> *4) that there was an employment-related reason for the decision to terminate the probationary employee ….*
>
> …

[55] Once those four elements are established, there is a presumption that the termination was a rejection on probation, unless the grievor can establish that it was arbitrary, discriminatory, or in bad faith (including being a camouflage or sham); see *Holowaty*, at para. 13; and *Rukavina*, at para. 57. The grievor bears the burden of proof of establishing this.

[56] In *Holowaty*, the Board found that the grievor failed to present an arguable case that his termination was a camouflage or sham and denied his grievance on that basis; see paragraphs 36 and 37. In *Rukavina*, the Board used a written submissions process to hear evidence about whether the grievor's termination was a rejection on probation; see paragraphs 63 to 65. It concluded that the grievor did not establish that the rejection was a sham or camouflage and denied the grievance; see paragraphs 72 to 74.

[57] I will note that the respondent's submissions on the case law on rejection-on-probation grievances referred to two dozen cases in total. Most of them preceded *Holowaty* and *Rukavina*, and several were referenced in one or both of those decisions; for example, see *Tello v. Deputy Head (Correctional Service of Canada)*, 2010 PSLRB 134; *Canada (Attorney General) v. Alexis*, 2021 FCA 216; *Rouet v. Deputy Head (Department of Justice)*, 2021 FPSLREB 59; and *Kirlew v. Deputy Head (Correctional Service of Canada)*, 2017 FPSLREB 28. I find no reason to detail all the respondent's submissions on all the cases that it cited.

[58] Following the Board's approach in *Rukavina* (see paragraphs 58 to 64), I have decided to accept as uncontested evidence the documents submitted by the respondent and to rely on them to issue a decision without an oral hearing, under s. 22 of the *Board Act*; see *Salimi v. National Research Council of Canada*, 2025 FPSLREB 76.

VI. The grievor was rejected on probation, and the Board does not have jurisdiction to hear his grievance

[59] Applying those principles to the grievance before me, the respondent has established that the grievor's termination was a rejection on probation. It meets all four of the elements set out in *Holowaty* and *Rukavina*, as follows:

- The grievor's letter of offer provided that he was subject to a probationary period of one year, starting on October 15, 2019.
- The letter terminating the grievor's employment as a rejection on probation was provided to him on September 14, 2020, which was within the one-year period.
- The grievor was paid in lieu of notice up to October 15, 2020.
- The respondent provided employment-related reasons for terminating the grievor's employment, namely, he had not demonstrated that he could satisfactorily perform the duties of a general duty and relief instructor, and it had concerns about his reliability, ability to meet work requirements, and ability to adhere to established policies, procedures, and practices.

[60] Through its submissions, the respondent also established that it provided the grievor with performance objectives and expectations throughout his employment and that it regularly gave him opportunities to improve. It also gave him adequate warning that a failure to improve could lead to a termination of employment.

[61] As the respondent met the conditions required to establish that the grievor's termination was a rejection on probation, the burden shifts to the grievor to establish that the termination was done in bad faith or was discriminatory or arbitrary, which includes being a camouflage or sham.

[62] The grievor's grievance cited no facts to suggest the termination was anything other than a rejection on probation. Since he made no submissions, the grievor failed to convince me that his termination was anything other than a rejection on probation. He also did not provide me with any reason to hold an oral hearing of the grievance.

[63] I recognize that by representing himself, the grievor might have had more difficulty knowing the test that he had to meet. For that reason, I took steps to ensure that he had access to the Board's case law. During the case management conference, I referred specifically to the Board's decision in *Holowaty* and to how he might access it on the Board's website. The grievor was given several chances to make his submissions and was warned more than once that if he did not make them, the Board could issue a decision on the basis of the respondent's submissions alone.

[64] For all of the above reasons, the respondent's objection to the Board's jurisdiction must be allowed, and the grievance must be denied.

VII. Comments on the timeliness objection

[65] As the respondent did not pursue its timeliness objection in its submissions, I will not render a decision on it.

[66] However, I want to note that the referral to adjudication took place in a context in which the respondent never issued a final-level reply to the grievance.

[67] Under clause 18.17 of the grievor's collective agreement, when a grievance is transmitted to the final level, the respondent has 20 days to provide its response. Under s. 90(2) of the *Federal Public Sector Labour Relations Regulations* (SOR/2005-79, "the *Regulations*"), when no final-level decision is received within the required period, the grievor has 40 days to refer it to adjudication. Once a final-level reply is issued, the grievor has 40 days to refer it, under s. 90(1).

[68] Because no final-level reply was issued, the grievor's referral was technically late, under the *Regulations.* Yet, at another level, it was early, because he did not wait

until a final-level reply was issued. I suspect that after 3.5 years of waiting for a final-level reply, he simply gave up waiting and decided to make his referral to adjudication.

[69] Timeliness objections made in this context are quite simply an encouragement for grievors to automatically refer every grievance to adjudication within 40 days after the deadline for a final-level reply has passed or to apply for an extension of time under the *Regulations* when the respondent fails to issue a final-level reply within a reasonable period, or to make application under s. 12 of the *Act* to compel an respondent to issue a final level reply (as contemplated by the Board in *Amato v. Treasury Board (Correctional Service of Canada)*, 2023 FPSLREB 50, at para. 32). None of these courses of action would be conducive to the efficient resolution of employment disputes. In my view, the respondent was wise to not pursue this objection further in this case.

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

(The Order appears on the next page)

VIII. Order

[71] The respondent's objection to the Board's jurisdiction on the basis that the grievor's termination of employment took place under the *PSEA* is allowed.

[72] The grievance is denied.

December 22, 2025.

David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board