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



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

BETWEEN

DAVID BELOVICH

Grievor

and

**DEPUTY HEAD
(Department of National Defence)**

Employer

Indexed as

Belovich v. Deputy Head (Department of National Defence)

In the matter of an individual grievance referred to adjudication.

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

For the Grievor: Malini Vijaykumar, counsel

For the Employer: Jennifer Bordeleau

Decided on the basis of written submissions,
filed May 12, June 11, and July 4, 2025.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] David Belovich (“the grievor”) is an EX-02 employee with the Department of National Defence (DND) in Ottawa, Ontario. On September 6, 2024, he received his 2023-2024 performance and talent assessment (“the assessment”) with a rating of “[s]ucceeded [m]inus” (“the performance rating”). On November 1, 2024, he learned that he received it because he was not performing the duties and responsibilities of the EX-03 position that he underfills as an EX-02.

[2] On November 27, 2024, the grievor filed a grievance. On May 12, 2025, he referred it to the Federal Public Sector Labour Relations and Employment Board (“the Board”) under s. 209(1)(c)(i) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the Act”).

[3] DND responded to the reference to adjudication by stating that the Board does not have jurisdiction over the grievance since it is solely about an alleged human rights violation. Further, the grievance is untimely and raises new issues that were not disclosed in the original grievance presentation.

[4] Section 22 of the *Federal Public Sector Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) permits the Board to decide a matter without an oral hearing. I have determined that the information before me sufficiently addresses the matters placed in issue. Therefore, I have decided this case on the basis of the parties’ written submissions.

[5] The Board does not have jurisdiction to hear this grievance. In substance, it is a stand-alone complaint of human rights discrimination and does not raise issues of demotion or termination within the meaning of s. 209(1)(c)(i) of the *Act*.

[6] Therefore, for the reasons that follow, the grievance is denied.

II. Background facts

[7] On February 23, 2018, DND offered the grievor a deployment to a position described as “... Director General Military Personnel within the CMP organization, under-fill [sic] at the EX-02 group and level.” He accepted it on March 6, 2018.

[8] The grievor continues to occupy that position.

[9] On September 6, 2024, Deputy Minister Stefanie Beck (“the deputy minister”) provided the grievor with the assessment. It included the performance rating and the following comments:

...

*In deciding your Talent Map Placement, your Manager considered your ongoing development and contributions, as well as your aspirations, willingness, and readiness to take on new challenges. Your 2023-2024 Talent Map Placement is **Move to a More Suitable Role**.*

I encourage you to further discuss your performance and talent management assessment with your manager to ensure you have all the tools and support you need to perform at a higher level.

...

[Emphasis in the original]

[10] During a telephone conversation on November 1, 2024, the grievor learned that the deputy minister directed the performance rating on the ground that he was not performing the duties and responsibilities of a substantive EX-03 position that he underfills as an EX-02.

[11] The grievance of November 27, 2024, described the matter as follows:

On September 6, 2024, Mr. Belovich received his annual 2023-2024 EX Performance and Talent Assessment. His rating was a Succeeded- (Succeeded Minus). No justification was provided for this rating at the time. However, in a telephone call on November 1, 2024 between Mr. Belovich & Rear Admiral Chris Sutherland, Mr. Belovich was informed that Deputy Minister Stefanie Beck had required the issuance of the Succeeded Minus rating because Mr. Belovich was not performing the duties and responsibilities of his substantive EX-03 position for which he is an EX-02 underfill.

The only reason Mr. Belovich continues to perform duties and responsibilities other than those of his substantive EX-03/EX-02 underfill is because he was relieved of his substantive responsibilities in November 2019, without cause, and DND continues to fail to reasonably accommodate his disability for SLE testing to regain his language profile so that he can either be placed in or apply for a suitable alternative EX position. Both Mr. Belovich's treating physician and DND's own SLE instructors have recommended further training and accommodation in order for Mr. Belovich to achieve the “C” language level in French that would allow him to occupy his position at-rank (EX-03).

By imposing this underfill status on Mr. Belovich and thereby capping his performance ratings at Succeeded Minus, DND (and DM Beck) are penalizing Mr. Belovich for its own failure to accommodate him. This violates the Directive on Terms and Conditions of Employment for Executives, the Directive on the Duty to Accommodate, the Canadian Human Rights Act, and other applicable policy, statute, and common law....

III. The Board has no jurisdiction over this grievance

[12] The grievor referred this grievance to adjudication under s. 209(1)(c)(i) of the Act, which provides as follows:

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*

...

(c) *in the case of an employee in the core public administration,*

(i) *demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct*

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 :*

[...]

c) *soit, s'il est un fonctionnaire de l'administration publique centrale :*

(i) *la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d) de la Loi sur la gestion des finances publiques pour rendement insuffisant, soit de l'alinéa 12(1)e) de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite, [...]*

[13] The Board is a creature of statute. It has no discretionary authority to exceed its mandate. Therefore, the first question to be answered must be whether this grievance falls within its jurisdiction.

[14] The grievor occupies the position that he accepted in 2018. No action has been taken to demote him or terminate his employment under the provisions of the

Financial Administration Act (R.S.C., 1985, c. F-11), as required to bring the grievance within s. 209(1)(c)(i) of the *Act*.

[15] Rather, the second paragraph of the grievance describes precisely the substance of the matter. The grievor alleges that DND has restricted his promotion, duties, and responsibilities by failing to accommodate his disability and provide him with the opportunity to regain the language profile required for an EX-03 position.

[16] This grievance can only be characterized as an allegation of a breach of the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). To proceed to a hearing before the Board, the human rights allegation must be linked to the Board's statutory jurisdiction.

[17] In this respect, the Federal Court's decision in *Chamberlain v. Canada (Attorney General)*, 2015 FC 50 is instructive. It held as follows at paragraph 41:

[41] Section 209 does not encompass individual grievances filed by employees who are not covered by a collective agreement and which raise stand-alone CHRA violation issues. In my view, section 209 is the only provision of the PSLRA that attributes jurisdiction to a grievance adjudicator....

[18] This grievance based solely on an alleged human rights violation falls squarely within the principles of *Chamberlain*. It cannot proceed further before the Board. The grievor's position falls within the unrepresented EX group. His terms and conditions of employment are not governed by a collective agreement. If they were, he might be able to rely on other statutory provisions, notably s. 209(1)(a) of the *Act*, which addresses the interpretation or application of a collective agreement. However, this individual grievance raises a stand-alone issue of human rights discrimination. As such, s. 209 provides no avenue for recourse.

[19] As the Board is without jurisdiction over this grievance, it is not necessary for me to decide whether the reference to adjudication raised new or different matters from the original grievance or to consider the question of timeliness.

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

(The Order appears on the next page)

IV. Order

[21] The employer's objection to the Board's jurisdiction is allowed.

[22] The grievance is denied.

December 5, 2025.

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