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File: 166-2-29374

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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

**M. EVANS, J. HIGGINS, R. HEWITT, B. HUTCHINGS,
R. KIRKWOOD, J. MORRELL, J. CUTLER, C. HOLSTEIN**

Grievors

and

**TREASURY BOARD
(Transport Canada)**

Employer

Before: Philip Chodos, Vice-Chairperson

For the Grievors: Wayne C. Foy, National Chairman,
Aircraft Operations Group Association

For the Employer: Harvey Newman, Counsel

Heard at Ottawa, Ontario,
February 3, 2000.

DECISION

[1] M. Evans, J. Higgins, R. Hewitt, B. Hutchings, R. Kirkwood, J. Morrell, J. Cutler and C. Holstein are all employed as Civil Aviation Inspectors with either Transport Canada or the Transportation Safety Board. On February 9, 1999, they submitted a grievance alleging that the employer was discriminating against them by hiring new employees at a rate of pay which is above the minimum rate provided in the relevant collective agreement (i.e. the Aircraft Operations Group collective agreement, Code: 401/90). By way of remedy the grievors are requesting that "...all wages, rates of pay and benefits be increased to reflect that of the "new" employees plus, additional adjustments for years served." The employer contends that this matter is not adjudicable under section 92 of the *Public Service Staff Relations Act (PSSRA)*.

[2] The facts of this case are not in dispute. The grievors' representative chose not to call witnesses, but rather relied on documentation which was submitted in evidence with the consent of the employer's counsel.

[3] The employer has recently been hiring persons into the Civil Aviation Inspectors' subgroup from outside the Public Service, at a salary rate which is above the minimum, and in some cases, at a rate of pay which is at the top of the scale for the classification. The grievors' representative, Wayne Foy, pointed out that there are currently members of this bargaining unit who, because of the wage freeze introduced in 1991, are paid less than the maximum of their pay scale, notwithstanding that they have been employed as Civil Aviation Inspectors for several years. (ref. Exh. G-1, Tab A-4). The employer has in fact acknowledged that this practice has been going on. Ms. Lynette Cox, Director General, Human Resources of Transport Canada, noted in her final level reply to this grievance that:

...

While I can sympathize with you that the current practice has resulted in lowering the morale of experienced employees like you, it is not discriminatory under any ground proscribed in the Canadian Human Rights Act. The pay scale is negotiated on the basis of the responsibilities and skills required at each level. The negotiation of an initial rate of pay is a question of labour market conditions alone.

The Department is currently encountering recruitment difficulties for experienced Civil Aviation Inspectors in certain geographic areas and employment specialties. As a result, the Department needs to make use of this flexibility to respond to market conditions and exercise discretion in

hiring individuals at a rate of pay above the minimum where warranted.

...

[4] In his submission, Mr. Foy noted that Chapter 1-1, (entitled "Rate of Pay on Appointment or Deployment") of the Treasury Board's Personnel Management Manual provides at paragraph 22 that:

22. Subject to these regulations and any other enactment of the Treasury Board, the rate of pay of a person on appointment to Part I Service shall be the minimum rate applicable to the position to which the employee is appointed.

According to Mr. Foy, this provision demonstrates that it is the employer's own policy to appoint new employees at the minimum rate of pay. He also noted that the provisions of the Personnel Management Manual are incorporated by reference into the Aircraft Operations Group collective agreement. He submitted that the pay scheme envisaged in the collective agreement provides for a progressive scale of rates of pay based on experience. Accordingly, the employer's current practice of hiring employees from outside the Public Service at more than the minimum rate of pay is contrary to the spirit and intent of the collective agreement, in that it fails to recognize the impact of experience on rates of pay. Mr. Foy contended that, while the newly appointed inspectors meet the required standard of training for pilots, they are in fact neophytes insofar as their duties and responsibilities as civil aviation inspectors are concerned. Therefore, it is both discriminatory and inequitable to pay them as much as, or more than, fully trained and experienced civil aviation inspectors who have been employed in that capacity for several years. Mr. Foy maintained that this situation has generated considerable morale problems for his members.

[5] Counsel for the employer submitted what is at issue in this case is not the application of the collective agreement in respect of the grievors, but rather the application of the Treasury Board Personnel Management Manual vis-à-vis new hirees. While the decision to pay new employees more than the minimum rate of pay may not be fair, it does not involve a violation of the collective agreement. Under its policy, Treasury Board provides for recruitment of employees above the minimum where certain conditions prevail; this is a necessary practice from time to time in order to obtain qualified employees. Mr. Newman maintained that it has not been demonstrated that the grievors were not paid in accordance with the collective agreement.

Furthermore, it is not open to the grievors to complain about the pay treatment of others. In support of his submissions. Mr. Newman cited *Hicks* (Board file 166-2-27345).

Reasons for Decision

[6] In my view, this grievance is not adjudicable for the following reasons. The right to refer a grievance to adjudication is founded on section 92 of the *PSSRA* and in this instance, paragraph 92(1)(a) which states as follows:

92. (1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

...

[7] The only provisions in the relevant collective agreement which have even the remotest relevance to this grievance are clauses 21.01 and 21.02 thereof. These provisions state the following:

21.01 Except as provided in clauses 21.02, 21.03, 21.04, 21.05 and 21.06 the terms and conditions governing the application of pay to employees are not affected by this Agreement.

21.02 An employee is entitled to be paid, for services rendered at:

(a) the pay specified in Appendix "A" for the classification of the position to which the employee is appointed, if the classification coincides with that prescribed in the employee's certificate of appointment

or

(b) the pay specified in Appendix "A" for the classification prescribed in the employee's certificate of appointment, if that classification and the classification of the position to which the employee is appointed do not coincide.

[8] It is readily apparent that neither these provisions, nor indeed any other provisions of this collective agreement, address the question as to the rate of pay to be paid to employees upon their initial appointment to positions within the bargaining unit. Appendix "A", which is noted in clause 21.02, again says nothing about the rate of pay upon initial appointment; it only sets out the pay rate scales for the Civil Aviation Inspectors' subgroup. Furthermore, clause 21.01 notes, in effect, that except as provided in Article 21, the terms and conditions governing the application of pay are not affected by this agreement. That is, the Treasury Board's policy on the application of pay governs employees in the bargaining unit, except to the extent that it is inconsistent with the specific pay provisions noted in Article 21. This would subsume, among other things, the Treasury Board policy respecting "Pay Above the Minimum on Appointment from Outside the Public Service" (ref. Exh. G-1, Tab A-1). Accordingly, the employer is not violating the collective agreement when it appoints new employees at a rate of pay higher than the minimum; it is in fact exercising its management prerogative as recognized in the relevant collective agreement.

[9] There is a further impediment to an adjudicator taking jurisdiction in this matter. As Mr. Newman has pointed out, a grievance under paragraph 92(1)(a) of the *PSSRA* is only referable to adjudication "*... with respect to the interpretation or application in respect of the employee of a provision of a collective agreement ...*" (underlining added). In other words, it is not open to an employee to submit a grievance to adjudication concerning the interpretation or application of a provision of a collective agreement except as it affects that grievor. In the instant case, if there is any issue concerning the application of the provisions of the relevant collective agreement, it is in respect of employees other than the grievors. On that basis alone this matter cannot be referred to adjudication.

[10] Accordingly, this grievance is denied for want of jurisdiction.

**Philip Chodos,
Vice-Chairperson.**

OTTAWA, March 28, 2000.