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Citation: 2000 PSSRB 91



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

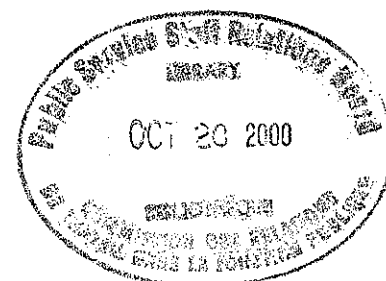
JOHN KERSWILL

Grievor

and

TREASURY BOARD
(Natural Resources Canada)

Employer



Before: Joseph W. Potter, Deputy Chairperson

For the Grievor: Raymond Charron, The Professional Institute of
the Public Service of Canada

For the Employer: Carol Bidal, Counsel

Heard at Ottawa, Ontario,
September 28, 2000.

DECISION

[1] On January 20, 1999, John Kerswill, a level 3 physical scientist (PC-03), filed a grievance claiming his job description is not complete and current. The bargaining agent, on behalf of the grievor, claims this is a violation of clause 20.01 of the Applied Science and Engineering Group collective agreement (Exhibit U-1).

[2] The employer claims that the generic job description applicable to the grievor, Broad Banded Work Description (BBWD) 515, does, in fact, contain a list of the duties Mr. Kerswill performs.

Evidence

[3] Mr. Kerswill began his employment in the federal Public Service as a physical scientist (PC-01) in 1976. He was re-classified to a PC-02 in 1979 and then to a PC-03, effective in 1990. The job description under which Mr. Kerswill operated in 1992 (Exhibit U-2) is, according to Mr. Kerswill's evidence, still valid today.

[4] In December 1998, Mr. Kerswill was given another job description (Exhibit U-3) which, he testified, does not accurately reflect his duties and responsibilities.

[5] The job description at issue (Exhibit U-3) is titled "Physical Sciences Specialist". Mr. Kerswill states he is an expert in his field. The job description of a position titled "Physical Science Expert" was introduced as Exhibit U-10.

[6] Mr. Kerswill reviewed his work objectives for 1998-1999 (Exhibit U-4) and for 1999-2000 (Exhibit U-5), and compared them to his current job description (Exhibit U-3).

[7] The grievor has undertaken a number of research projects (Exhibit U-6), and has published extensively in his chosen field (Exhibit U-7).

[8] In addition to the fact the grievor felt his job title should reflect the fact that he is an expert, he testified the duties in his current job description do not reflect the fact that he conducts independent research and publishing. Essentially, he stated the job needs a higher level of knowledge and skills than is indicated. Also listed in the job description are duties he does not actually perform.

[9] In cross-examination, the grievor acknowledged that the job description does state that the incumbent will produce research findings in publications, but he felt this should be given more prominence in the job description itself.

[10] The grievor was shown his 1999-2000 Performance Feedback Report (Exhibit E-1) which lists his responsibilities and objectives for that fiscal year. His signature appears at the bottom of the document. The grievor agreed that those were the responsibilities he was charged with for that fiscal year, and they were all contained in his job description.

[11] Georgina LeCheminant is the Head, Mineralogy and Chemistry Sub-division, and, in 1998, was the Acting Director, Mineral Resource Division. As the Acting Director, Ms. LeCheminant reviewed all projects and performance reports for those employees not reporting directly to her, including the grievor. She gave evidence-in-chief, and there was no cross-examination.

[12] Her undisputed testimony was that the work of Mr. Kerswill is that of a specialist, with leadership in the specific subject matter. She said Mr. Kerswill would be part of a larger project, and he would receive initial instruction on the project from the Head of the sub-division, following which he would be on his own.

[13] Ms. LeCheminant testified about the difference, from a work perspective, between someone who is a specialist and someone who is an expert. Essentially, one can expect a profound and deep knowledge from an expert. A specialist will work in a narrower framework in his/her area of specialization. She testified that Mr. Kerswill is a specialist in his area.

[14] Ms. LeCheminant also testified that all of the responsibilities Mr. Kerswill had in fiscal year 1999-2000, as listed in his Performance Feedback Report (page 2 of Exhibit E-1), are contained in the generic job description.

Arguments

For the Grievor

[15] The generic job description, BBWD 515, provided to Mr. Kerswill is not an accurate reflection of his duties and responsibilities and, as such, clause 20.01 of the collective agreement has not been met.

[16] The grievor conducts highly specialized research, and is an expert in his field. Once the overall project is discussed with his supervisor, there is very little supervision or direction. His findings are published both nationally and internationally.

For the Employer

[17] Ms. Bidal introduced a Book of Authorities she would be relying on. In particular, Ms. Bidal referred to the decision of Vice-Chairperson Chodos in *Jaremy*, 2000 PSSRB 59 (166-2-28628, 166-2-29291), at tab 2, wherein he states at paragraph 24:

...the job description does adequately describe, in broad terms, what are the functions and duties of the grievors...

[18] Similarly here, the uncontested evidence of Ms. LeCheminant established that the job description applied to the grievor does cover all of his duties. Furthermore, the grievor is a specialist in his field, not an expert.

[19] In cross-examination, the grievor was presented with his Performance Feedback Report, which listed the duties he was expected to perform. He agreed they were contained in his current job description.

Reasons for Decision

[20] The grievor claims the employer has violated clause 20.01 of the collective agreement for the Applied Science and Engineering Group with an expiry date of September 30, 1999. This clause reads:

20.01 Upon written request, an employee shall be entitled to a complete and current statement of the duties and responsibilities of the employee's position, including the position's classification level and the position rating form.

[21] The grievor bears the onus of proving that the job description is not complete and current, insofar as his duties and responsibilities are concerned.

[22] The grievor agreed that his duties and responsibilities for the fiscal year 1999-2000 are outlined in his Performance Feedback Report (Exhibit E-1, page 2). In addition, he agreed these duties and responsibilities are listed, in one fashion or another, in his job description (Exhibit U-3).

[23] Ms. LeCheminant, in her uncontested testimony for the employer, stated that Mr. Kerswill is considered a specialist in his field of work, and a deeper and more profound knowledge base would be required to be considered an expert.

[24] In *Hughes*, 2000 PSSRB 69 (166-2-29452), the adjudicator dealt with the job description BBWD 518, Physical Science Expert (Exhibit U-10). At paragraphs 26 and 27 of the decision, Chairperson Tarte writes:

[26] ...A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished.

[27] Given the very persuasive evidence of Mr. Osadetz and the fact that the onus of proof to show a violation of the collective agreement lies with the grievor, I must conclude that the employer has in fact provided Mr. Hughes with a complete and current statement of the duties and responsibilities of his position.

[25] Similarly, I also find the grievor has failed to discharge the onus of proof to show the collective agreement has been violated. I also conclude that, in this case, the employer has provided the grievor with a complete and current statement of the duties and responsibilities of his position.

[26] Accordingly, the grievance is denied.

Joseph W. Potter,
Deputy Chairperson

OTTAWA, October 17, 2000