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Public Service
Staff Relations Act :

Before the Public Service
Staff Relations Board

BETWEEN

FERNANDO BOUDREAU

Grievor

and

TREASURY BOARD
(Public Works and Government Services Canada)

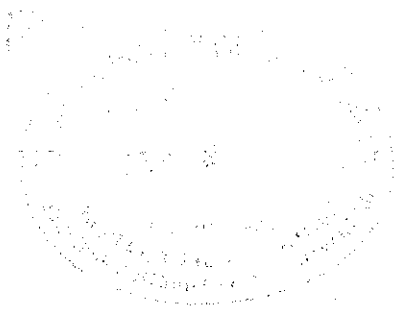
Employer

Before: Jean-Pierre Tessier, Board Member

For the Grievor: Yvette G. Michaud, Professional Institute of the Public Service of
Canada

For the Employer: Jennifer Champagne, Counsel

(Decided without an oral hearing.)



DECISION

[1] Fernando Boudreau is an engineer (EN-ENG-04) with the Department of Public Works and Government Services.

[2] As such, Mr. Boudreau's working conditions are governed by the collective agreement signed by the Professional Institute of the Public Service of Canada and Treasury Board on December 21, 2000, and expiring on September 30, 2002.

[3] Since April 10, 2001, Mr. Boudreau has been on the pre-retirement transition leave program.

[4] On May 17, 2001, Mr. Boudreau filed the following grievance:

[TRANSLATION]

I wish to file a grievance because I am not receiving the terminable allowance provided for in the Memorandum of Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada, Appendix "1".

[5] The employer responded that, since Mr. Boudreau is on pre-retirement transition leave, and performs his duties and is paid for three days of work per week, his salary-related compensation, including the terminable allowance, should be calculated on the basis of his reduced hours of work.

[6] The parties agreed to make their submissions in writing.

Arguments of the parties

[7] The grievor referred to Appendix "1", concerning the terminable allowance, and indicated that, according to subparagraph (i) of Article 1, "the terminable allowance specified above does not form part of an employee's salary."

[8] Moreover, according to the grievor, only a part-time employee can have the terminable allowance prorated in accordance with his work week; to this effect, he cited subparagraph (iii) of Article 1 of Appendix "1":

(iii) Part-time employees shall be entitled to the Terminable Allowance prorated in accordance with their assigned work week.

[9] Although Mr. Boudreau is taking advantage of the pre-retirement transition leave program, he maintained that his reduced work week does not alter his full-time employment status. He drew attention to the definition of part-time employee in the *Part-time Employment Policy*:

Part-time employee means a person employed to work less than the normal daily or weekly hours of work established for a full-time employee of the same occupational group and level.

[10] He further observed that full-time employees who want to change their employment status to part-time must make a request in writing. Mr. Boudreau noted that he had never asked to become a part-time employee.

[11] The employer for his part asserted that Mr. Boudreau does not work full-time and that, for the purpose of calculating the premium, his status should be equated with that of a part-time employee. According to him, an employee in the pre-retirement transition leave program is a full-time employee solely for the purposes of benefits, as it appears from Appendix 2, which states:

[TRANSLATION]

...If you were a full-time employee before taking the PRTL, you will remain a full-time employee for the purposes of the employment and the benefits.

[12] The employer also noted that the employee is eligible "to receive a terminable allowance in the following applicable annualized amount to be paid biweekly." Therefore, the employer concluded, this is not an annual amount but an annualized allowance paid biweekly.

Reason for decision

[13] An examination of the wording of Appendix "1", which concerns the terminable allowance, indicates to me that this allowance does not form part of the employee's salary and that part-time employees receive a terminable allowance prorated in accordance with their assigned work week.

[14] In my opinion, the wording is not specific enough to determine whether a full-time employee who is on leave without pay for one day a week should have his

premium reduced proportionately. The wording is intended to establish the initial premium for part-time employees but is vague with respect to full-time employees who take advantage of the reduced work schedule.

[15] Accordingly, it remains to verify whether pre-retirement transition leave allows the employer to reduce the benefits in proportion to the hours worked.

[16] Section 5 of the *Pre-retirement Transition Leave Policy* provides as follows:

5. Policy requirements

Pre-retirement transition leave (PRTL) enables employees who are within two years of retirement to reduce the length of their work week by up to 40 per cent. Pay for participating employees would be adjusted to reflect the shorter work week, but their pension and benefits coverages, as well as premiums or contributions, would continue at pre-arrangement levels.

[17] The key feature of transition leave is the reduction of the employee's pay to reflect the shorter work week. According to Article 2 of the collective agreement,

"weekly rate of pay" means an employee's annual rate of pay divided by 52.176 ("*taux de rémunération hebdomadaire*");

"hourly rate of pay" means a full-time employee's weekly rate of pay divided by thirty-seven and one-half (37 1/2) ("*taux de rémunération horaire*");

"daily rate of pay" means an employee's weekly rate of pay divided by five (5) ("*taux de rémunération journalier*");

At page 108 of the French version of the collective agreement, there is reference to an "annual rate of pay" followed by the pay scales.

[18] It is true that the explanatory notes and explanatory letters contain references to pay and reduced pay. However, what the adjudicator must interpret is the collective agreement, the letter of understanding and the policies that are binding on the parties. The *Pre-retirement Transition Leave Policy*, however, speaks of reduced pay and there is no clarification in respect of the premiums or other benefits received by the

employee except the statement that pension and benefits will stay at pre-arrangement levels.

[19] It is true that the terminable allowance is derived from an annualized amount paid biweekly. Because of the annualized amount reference, the employer could claim that this is a split amount payable with the payment of the biweekly pay. One may ask whether the allowance would be paid if the employee is not paid because of his absence. This question differs from the issue in the case at bar since, in this case, the employee is present during each pay period.

[20] Article 40 of the collective agreement concerns the working conditions of part-time employees. It may be noted in clause 40.06 that:

Designated Holidays

40.06 A part-time employee shall not be paid for the designated holidays but shall instead be paid a premium of four point two five (4.25) per cent for all straight-time hours worked during the period of part-time employment.

[21] In the letter of April 10, 2001, that was sent to Mr. Boudreau, the employer stressed, under the heading "holidays":

[TRANSLATION]

HOLIDAYS

A full-time employee retains the right to be paid for holidays where the employee is not on leave without pay on the working day preceding and on the working day following the statutory holiday.

Accordingly, it is apparent that an employee on pre-retirement transition leave is still a full-time employee on leave without pay for a portion of his work schedule.

[22] There is nothing from which it may be concluded that Mr. Boudreau's full-time employment status is altered by the fact that he benefits from the *Pre-retirement Transition Leave Policy*, and it is clearly stated that the reduction relates to pay.

[23] Considering that the collective agreement defines pay as the annual rate of pay, which is equivalent to the annual salary and salary scales, the employer may not

reduce the terminable allowance, an allowance that it has defined, incidentally, as not forming part of the employee's salary.

[24] For the reasons set out above, I allow the grievance.

**Jean-Pierre Tessier,
Board Member**

OTTAWA, September 5, 2002

PSSRB Translation

