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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

SANDRA SHEARER

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

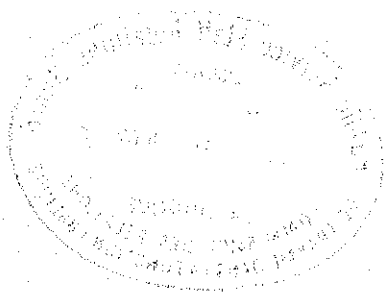


Before: Guy Giguère, Deputy Chairperson

For the Grievor: Steve Eadie, Professional Institute of the Public Service of Canada

For the Employer: Robert H. Jaworski, Counsel

Heard at Toronto, Ontario,
June 25 and 26, 2002.



DECISION

[1] Dr. Sandra Shearer is a District Veterinarian employed by the Canadian Food Inspection Agency (CFIA), at the VM-02 level, at the Peterborough District Office in Ontario. On August 15, 2001, Dr. Shearer grieved that she was assigned additional duties in May 2000, which she believed raised the classification of her position to the VM-03 level. She requested, accordingly, acting pay at the VM-03 level for the period starting May 2000.

[2] The employer denied the grievance on the basis that it was redundant to the grievances Dr. Shearer and other veterinarians had filed in December 2000 claiming that their job description did not accurately reflect their duties. The employer explained that there was an agreement with the bargaining agent, the Professional Institute of the Public Service of Canada (PIPSC), that these grievances would be held in abeyance pending completion of the VM job description update exercise.

[3] On June 19, 2002, Mr. Jaworski wrote to Mr. Eadie, with a copy to the Public Service Staff Relations Board (Board), indicating that the employer would be objecting to Dr. Shearer's acting pay grievance as untimely under clause D6.09 of the VM group collective agreement. He also indicated that the employer would argue that the Board lacked jurisdiction to consider the matter by reason of section 7 of the *Public Service Staff Relations Act (PSSRA)* as the grievance was clearly a classification matter.

Evidence

[4] Dr. Shearer explained that in early 2000, the CFIA was being reorganized. In May 2000, Kenneth Murray, Inspection Manager in the northeast region of Ontario, to whom she reported, assigned her new programs to administer. Dr. Shearer was at that time on the National Executive of the PIPSC. She was aware that several other veterinarians employed by the CFIA were also assigned additional programs. There was willingness by the PIPSC to have work done while a final structure for the CFIA was put in place. Dr. Shearer felt that management would eventually address this situation until she was informed by the employer that her position as veterinarian had not significantly changed to warrant a reclassification.

[5] On December 11, 2000, Dr. Shearer along with several veterinarians at the CFIA grieved that the employer had not provided them with a complete and current statement of duties. Dr. Shearer stated that as a result of this grievance she received from Vickie Thérien, the Regional Director for the northeast region, a job description

(Exhibit G-1) for her position. This was the same job description that has been in place since 1993 and it did not list the additional programs assigned to Dr. Shearer as of May 2000.

[6] On May 16, 2001, Dr. Shearer wrote to Mr. Murray (Exhibit E-2) that she had received a letter from Ms. Thérien advising her that this job description (Exhibit G-1) was an accurate reflection of her duties. Dr. Shearer advised Mr. Murray that, since the job description only required her to do work in the animal health program, she would no longer do any of the work in the other programs but would refer those issues to him.

[7] Mr. Murray explained in cross-examination that he understood from this e-mail (Exhibit E-2) from Dr. Shearer that the new duties that had been assigned to her were not reflected in her job description and that she would not assume responsibility for resolving problems with those new duties.

[8] Mr. Murray asked Dr. Shearer if she would perform these additional duties if they were added to the job description. She agreed and asked that the new job description be sent for classification review, as she believed that the additional duties were of a higher level than currently classified.

[9] A new job description for the position of District Veterinarian held by Dr. Shearer in the Peterborough district was prepared (Exhibit G-3). Both Dr. Shearer and Mr. Murray agreed that this new job description reflected all of the duties performed by Dr. Shearer. Mr. Murray forwarded the job description to Dana Holmes, of the CFIA, asking that it be assessed for classification purposes.

[10] Dr. Shearer testified that the employer's response was that the new job description would be put in Dr. Shearer's file but would not be sent for classification. Dr. Shearer therefore filed two grievances on August 15, 2001, one asking that the new job description be sent to classification and the other is the instant grievance requesting acting pay.

[11] On June 11, 2002, Sheila Hoffman, Acting Regional Director for the northeast region of Ontario, wrote to Dr. Shearer to inform her that her position, following the new job description, had been reviewed and classified at the VM-02 level effective May 15, 2000. As a result of this review classification, Dr. Shearer withdrew her

grievance of August 15, 2001 asking that her new job description be sent to classification.

[12] As for the instant grievance requesting acting pay, Dr. Shearer testified that she performed several of the duties found in the Inspection Manager job description. The Inspection Manager position is classified at a higher level than her own position (VM-02), as it comes under four different groups: BI-04, AG-04, VM-03 and PM-06. Mr. Murray explained that these four classifications were created so that successful candidates could come under different streams. The job description of Inspection Manager is at the regional level, which distinguishes the job description of the Inspection Manager (Exhibit G-2) from the description of District Veterinarian (Exhibit G-3), which is at the district level. The job description specifies that the Inspection Manager position is located at the area level. Dr. Shearer explained that the job description is generic and that the term used in Ontario is region. Inspection managers in the northeast region of Ontario are responsible for part of a region and the northeast region is divided into three. Mr. Murray is responsible for the northeast central region, which the Peterborough district falls under. As found in her new job description (Exhibit G-3), Dr. Shearer reports to the Inspection Manager, namely Mr. Murray, and her position involves delivery of several programs to her district.

[13] Mr. Murray explained that, in relation to Dr. Shearer, even though she performed several of the duties, as Inspection Manager Mr. Murray has greater responsibility and authority regarding these duties. He has more responsibility in terms of disciplinary action, financial authority, material resources and in terms of a geographical scale, since his area of responsibility extends from Yonge Street in Toronto to the Peterborough area and to the north to Lake Simcoe. This involves a greater number of offices and a broader range of duties, programs, issues, and personnel (more or less 60 employees).

[14] Mr. Murray testified in cross-examination that Dr. Shearer is extremely competent and that she is able to work independently in many respects.

[15] Dr. Shearer explained that in the Peterborough district she is accountable for seven employees: five inspectors, one clerk and one veterinarian at the VM-01 level. She assigns their work and, as for routine work, she ensures that it is done. If a problem arises, she ensures measures are taken to achieve a resolution.

ArgumentsFor the Grievor

[16] Mr. Eadie submitted that when an employer requires an employee to substantially perform the duties of a higher-level classification without being paid accordingly, the employee's recourse is to request acting pay under the applicable collective agreement. Section G1.08 of the collective agreement between the CFIA and PIPSC regarding the Veterinary Medicine (VM) group bargaining unit (expiry date: 2000/09/30) stops the employer from not filling a higher-level classification position and assigning those duties to a lower-level classification position.

[17] Mr. Eadie submitted that an adjudicator appointed under the PSSRA has jurisdiction to hear such an acting pay grievance, which is distinguishable from a classification grievance, as it has been established by the Federal Court, Trial Division, in *Stagg v. Canada (Treasury Board)* (1993) 71 F.T.R. 307.

[18] Dr. Shearer testified as to her duties and she does not claim that she performed all of the duties of Inspection Manager. The employer had the responsibility to provide a current and up-to-date job description. If Dr. Shearer had been provided with a current job description, she would not have filed an acting pay grievance. Dr. Shearer is claiming acting pay only for the period until her new job description was classified, that is June 11, 2002.

[19] As for the employer's argument with respect to timeliness, the first time that the employer raised this matter was through counsel's letter of June 19, 2002. The grievor objects to the employer raising it at this time because it was never raised previously during the grievance process; by not doing so, the employer has waived its right to raise it at this time. Dr. Shearer made efforts to raise the issue with management and management acknowledged that the job description did not include the new duties.

For the Employer

[20] Mr. Jaworski submitted that this grievance is really a classification grievance. As we look at the evidence, Dr. Shearer filed the instant grievance when she learned that her new job description would not be classified.

[21] The evidence shows that Dr. Shearer's duties are limited to the Peterborough district office. Even if there are similarities in the duties performed by Dr. Shearer and the duties of Inspection Manager, the latter's responsibilities extend beyond the district level to a regional basis. Mr. Murray has 60 employees reporting to him within seven offices. The financial authority and responsibilities in terms of personnel and program issues are greater for the Inspection Manager. Therefore, it cannot be said that Dr. Shearer performed the day-to-day duties of Inspection Manager.

[22] Mr. Jaworski also submitted that Dr. Shearer's grievance is untimely. Relying on the *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813, decision and clause D6.09 of the collective agreement, the grievance can only concern the salary for the period of 25 days preceding the filing of the grievance.

Reasons for Decision

[23] The grievor is claiming that she substantially performed the duties of a higher classification level (Inspection Manager) in an acting capacity prior to June 11, 2002 when her new job description was classified at the VM-02 level effective May 15, 2000. Following this classification, Dr. Shearer withdrew the grievance of August 15, 2001 where she asked that her new job description be classified (Exhibit E-12).

[24] As it has been clearly established in *Stagg (supra)*, the instant grievance, asking for retroactive remuneration under clause G1.08 of the collective agreement, is not a relief contrary to section 7 of the PSSRA as claimed by the employer. The grievance relates to pay rather than to classification. Clause G1.08 reads as follows:

G1.08 Acting Pay

When an employee is required by the Employer to substantially perform the duties of a higher level classification level on an acting basis for:

(a) ten (10) consecutive working days for levels VM-1 to VM-3;

(b) ...

they shall be paid acting pay calculated from the date on which they commenced to act as if they had been appointed to that higher classification level for the period in which they act.

...

[25] The issue for me to determine is whether Dr. Shearer substantially performed the duties of a higher classification, namely of Inspection Manager, at the VM-03 level. The evidence from Dr. Shearer and Mr. Murray is that Dr. Shearer performed some of the duties of Inspection Manager in the Peterborough district. Nevertheless, as Mr. Murray testified, the duties of Inspection Manager have a broader scope at the regional level than at the district level. In comparison to a district veterinarian, an inspection manager has more financial authority and managerial responsibilities. The geographic area for which an inspection manager is responsible is greater and there are more personnel and program issues that fall under his authority. The broader range of responsibilities of an inspection manager at a regional level is intrinsic in the nature of the duties of an inspection manager. I therefore find that Dr. Shearer did not substantially perform the duties of Inspection Manager.

[26] The grievance is therefore denied.

[27] Dr. Shearer explained that she was first told that the 1993 job description was an accurate description of her duties. Later, when a new job description was prepared, she received no assurances that it would be sent to classification.

[28] Mr. Eadie, in his arguments, indicated that the instant grievance would not have been filed if a current job description had been prepared. I understand that there were delays in preparing a job description. There was also an agreement between the PIPSC and the CFIA in May 2001 to hold grievances in abeyance. Nevertheless, these delays do have a negative impact on labour relations and this should be noted by the employer.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, September 3, 2002.