

Date: 20051201

File: 166-32-34913

Citation: 2005 PSLRB 166



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

SERGEY MELNICHOUK

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

EXPEDITED ADJUDICATION DECISION

Before: Ian R. Mackenzie, adjudicator

For the Grievor: Denise Balfe, Professional Institute of the Public Service
of Canada

For the Employer: James Butler, Canadian Food Inspection Agency

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Ottawa, Ontario,
November 25, 2005.

REASONS FOR DECISION

[1] Dr. Sergey Melnichouk has grieved the refusal of his employer, the Canadian Food Inspection Agency (CFIA), to reimburse him for the payment of professional fees to the College of Veterinarians of Ontario for the 2001 calendar year.

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the “former Act”).

[3] The parties submitted an “Agreed Statement of Facts” and documents. The “Agreed Statement of Facts” is as follows:

1. *Dr. Sergey Melnichouk is currently employed by the Canadian Food Inspection Agency (CFIA) and holds a position of a VM-01, veterinarian, in the Meat Hygiene program. He is a member of the Veterinary Medicine (VM) Group bargaining unit. Dr. Melnichouk was employed in this capacity during the 2001 calendar year.*
2. *The CFIA has VM-1's working in their Meat Hygiene program, the Animal Health program and labs across the country.*
3. *The College of Veterinarians of Ontario (CVO) is a provincial body that, among other things, registers and licenses veterinarians to work within the province of Ontario. Similar organizations are found in the other provinces. Veterinarians in Ontario are required to pay a yearly licencing fee to the CVO to maintain their veterinary license.*
4. *Dr. Melnichouk paid for his general veterinary license to the CVO in 2001. A copy of his receipt for 2001 can be found at Appendix A. The amount paid was \$251.45 for the 2001 year (this amount was prorated).*
5. *Dr. Melnichouk requested reimbursement from the CFIA for his veterinary license fees for the years 2001 and 2002. He was denied this reimbursement by way of memo (see Appendix B).*
6. *Dr. Melnichouk filed a grievance on July 11, 2002, grieving that he was denied reimbursement by the CFIA of his CVO license fees, which he alleges is a violation of Article E2.01 of the collective agreement (Appendix C) between the CFIA and the Professional Institute of the Public Service of*

Canada VM Group Bargaining Unit. As corrective action he was seeking reimbursement of the license fees that he paid to the CVO for the years 2001 and 2002.

7. *Article E2.01 of the VM collective agreement states:*

“The Employer shall reimburse an employee for his payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his position.”

8. *The CFIA has responded to the final level grievance presentation with the position that having a CVO license is not a requirement for the continuation of the duties of Dr. Melnichouk's position and he was therefore, not reimbursed for his CVO license fees in the year 2002. (Note: the grievance response contains an error with regard to the payment of license fees for the specific year in question. Dr. Melnichouk was paid \$561.75 representing his CVO license fees for 2002 as he did work in an animal health capacity for part of that year. He was not reimbursed for the license fees that he paid to the CVO in 2001. The reimbursement of his fees for 2001 is still outstanding.)*

9. *Sodium Pentobarbital (Euthanyl/Euthanol), T-61 and Rompun (Xylazine) are all regulated drugs found in either the Controlled Drugs and Substances Act or the Food and Drug Act. These drugs are used to either euthanize or tranquillize animals for veterinary purposes. The Controlled Drugs and Substances Act and the Food and Drug Act are Federal Statutes that apply to Federal employees working for the CFIA.*

10. *For a veterinarian working for the CFIA in Ontario to obtain, administer, transport etc. these regulated drugs (listed in paragraph 9), they require a veterinary license under the CVO. Under the Federal statutes, it would be illegal to do these things if they did not have their license.*

11. *Dr. Melnichouk was not instructed by his employer to euthanize or tranquillize any animals using any regulated drugs in the 2001 year.*

12. *Dr. Melnichouk was instructed and did euthanize animals while working on assignment in the Animal Health program as a VM-1 at the Brampton district office in 2002 and subsequent years.*

13. Dr. Melnichouk was placed on assignment to the Animal Health program at the Brampton office on several occasions, including December 2002-December 2003, several days in the summer of 2004 and for two weeks in September of 2005.

14. The VM-1's at the Brampton Animal Health office are required to euthanize animals in the field and at the airport if the situation arises.

15. The protection of public health, food safety and animal health has been and continues to be a responsibility of the Canadian Food Inspection Agency in conjunction with other government departments. The CFIA would be involved in outbreaks such as BSE (Mad Cow) disease, Avian Flu, Foot and Mouth outbreaks, etc.

16. The CFIA took a lead role in the BSE (Mad Cow) disease outbreak/finding that occurred in May 2003 (see Appendix D - Q's & A's).

17. Dr. Melnichouk was not involved in the eradication of the herds in Alberta in 2003 during the BSE outbreak.

[4] The grievor's representative, Denise Balfe, also introduced a signed statement from Dr. L.J. Banbury, who works as a veterinarian (VM-1) in the Meat Hygiene Program in Alberta. In his statement, he indicated that in May and June 2003, he was instructed to assist in the depopulation of herds of cattle and was responsible for euthanizing the cattle with controlled drugs.

[5] Ms. Balfe argued that, although euthanizing animals and using controlled drugs was not part of his substantive duties, Dr. Melnichouk could be called upon to perform these duties by the employer. The employer's representative, James Butler, submitted that if Dr. Melnichouk had been required to perform duties where a veterinary licence was required he would have been reimbursed.

[6] The parties referred me to the following decisions: *Harper v. Canadian Food Inspection Agency*, 2002 PSSRB 87, and *Katchin v. Canadian Food Inspection Agency*, 2004 PSSRB 26.

[7] It was noted at the hearing that the current collective agreement now provides for payment of fees (up to a maximum) when the payment of fees is not a requirement for the performance of duties.

Reasons

[8] I find that Dr. Melnichouk was not required to perform duties in 2001 that required that he be licensed. The employer indicated that if he had performed such duties during the year, he would have been reimbursed.

[9] For all of the above reasons, I make the following order:

(The Order appears on the next page.)

Order

[10] The grievance is, therefore, denied.

December 1, 2005.

**Ian R. Mackenzie,
adjudicator**