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*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**MICHEL JODOIN AND ROCH POULETTE**

Grievors

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Jodoin and Poulette v. Canada Revenue Agency*

In the matter of grievances referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** [Jean-Pierre Tessier, adjudicator](#)

***For the Grievors:*** [Frédéric Durso, Professional Institute of the Public Service of Canada](#)

***For the Employer:*** [Stéphane Hould, counsel](#)

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Heard at Montréal, Quebec,  
October 13, 2005.  
(P.S.L.R.B. Translation)

Grievances referred to adjudication

[1] Michel Jodoin and Roch Poulette are employed by the Canada Customs and Revenue Agency, now the Canada Revenue Agency ("the Agency") as team leaders, audit.

[2] When they held positions at the AU-03 group and level, they applied for employment at the AU-04 group and level. They were successful in the competition, but, in the meantime, their duties were reclassified to the MG-05 group and level. The employer refused to apply the promotion increases, and considered the grievors to have been reclassified.

[3] The grievors challenged that decision by filing grievances on July 23, 2003. The grievances were referred to adjudication in March 2004, and the hearing was held in October 2005.

[4] 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*, these references 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").

Summary of the evidence

[5] The grievors applied for AU-04 team leader positions. They were successful in the competition and, on September 27, 2002, they were put into a pool of prequalified candidates for possible appointments (exhibits F-9 and F-13).

[6] In the meantime, the employer reclassified the positions. The AU-03 and AU-04 team leader positions were transferred to and reclassified at the MG-05 group and level.

[7] Mr. Jodoin filed various documents (exhibits F-5, F-8, F-9 and F-12) showing that he had participated in a competition for an AU-04 position. However, he acknowledged that he had been informed that the Agency planned to establish a new position classification structure, and that positions might be created at the MG-05 group and level. The grievor filed an email to this effect dated December 7, 2001 (Exhibit F-7).

[8] On August 6, 2002, a memorandum stating to the grievors that the Agency had established the MG group. In a letter dated June 27, 2003, Mr. Jodoin was offered a permanent appointment to a team leader position at the MG-05 group and level (Exhibit F-12). This letter referred to a competition number identical to the one found in the letter of September 27, 2002, prequalifying him for a possible appointment to a position at the AU-04 group and level (Exhibit F-9).

[9] Mr. Jodoin testified that he had asked his employer why there had been no follow-up to the AU-04 competition and why he was being offered a transfer following the restructuring of an MG-05 position without this being a promotion. He said that he was told in response that the competition would be used by three different offices of the Agency, that reclassification was necessary if he wanted to be reclassified in Montréal, and that he was going to be transferred to the MG-05 group and level. Moreover, during the grievance process, and, specifically, in the grievance reply at the final level on March 3, 2004, the employer maintained that the letter of offer (Exhibit F-12) had been sent to him inadvertently, that it would be withdrawn and that its purpose had been only to confirm his MG level.

[10] Mr. Poulette testified along the same lines as his colleague. He filed various documents (exhibits F-13 to F-15) showing that he had participated in the same AU-04 competition for a team leader position and that the Agency had restructured positions at the same time, thus creating the MG-05 group and level, which replaced the AU-03 and AU-04 group and level team leader positions.

[11] According to Mr. Poulette, the competition for the AU-04 group and level position involved a pay increase when being slotted into the scale, while reclassification involved a transfer to the closest pay.

[12] Louise Desorci, a human resources advisor, explained that she is familiar with the grievors' case. She was on the Agency's staffing committee. The competition for the AU-04 group and level position was posted in January 2002 (Exhibit E-3) even though management knew that the reclassification and change of the MG standard were to be adopted.

[13] Ms. Desorci explained that the creation of the MG-05 group and level position involved cutting AU-03- and AU-04-level positions. According to her, positions did not

have to be posted again because the AU-04 positions would be staffed as an MG-05 group and level position.

[14] According to Ms. Desorci, following the AU-04 competition, the grievors met the placement criteria for staffing a position. However, they were reclassified at the MG-05 group and level first.

[15] She added that another competition would have been necessary if the Agency had proceeded by selection. By withdrawing from the pool of candidates, the grievors could keep their reclassification at the MG-05 group and level.

[16] Luce Régis, a compensation advisor, was involved in the reclassification of positions when the MG-05 group and level were created. She stated that there is a difference in salary, especially in Mr. Poulette's case. In May 2002 his salary was \$70 024. If he had received a promotion, it would have increased to \$72 698 (exhibits E-1, E-2 and E-4 to E-6).

#### Summary of the arguments

[17] According to the grievors, the employer deprived them of compensation-related benefits by reclassifying the positions rather than following through with the AU-04 competition, which would have entitled them to a promotion.

[18] The grievors asked the employer whether there was any point to the competition, given that, at the time, there was talk of the positions being reclassified. The grievors did not obtain a specific answer from the employer, and had to go through each stage of the competition.

[19] According to the grievors, the employer made an error by not following through with the competition, and must bear the consequences. They submit that they are eligible for a promotion.

[20] For its part, the employer submits that the grievance concerns compensation and not the promotion procedure. The evidence shows, in fact, that the grievors obtained their MG-05 group and level positions by reclassification, and not following a competition.

[21] Classifying positions is one of the employer's prerogatives. Staffing and classification are excluded from an adjudicator's jurisdiction by section 7 of the former *Act*, which reads as follows:

*7. Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.*

Reasons

[22] In this case, the facts are not in dispute. The evidence shows that the team leader positions classified at the AU-03 and AU-04 group and level were reclassified to the MG-05 group and level on March 31, 2002, as part of a restructuring carried out by the Agency.

[23] Moreover, it is true that, if the employer had followed through with the competition for the AU-04 position group and level, the grievors' salaries would have been calculated using the criteria applicable to promotions. However, the grievors admitted at the hearing that the employer did not follow through with that competition.

[24] Thus, based on the evidence on the record and the statements made at the hearing by the grievors, I must find that the classification of their positions at the MG-05 group and level occurred following a reclassification of positions by the Agency.

[25] Did the employer act wrongly by not following through with the competition? Was an error made in the employer's procedure for reclassifying positions? The grievance does not address these questions and, in fact, staffing is outside the adjudicator's jurisdiction under section 7 of the former *Act*.

[26] For these reasons, I make the following order:

*(The Order appears on the next page)*

Order

[27] The grievances are dismissed.

October 6, 2006.

**Jean-Pierre Tessier,  
adjudicator**