

Date: 20060601

File: 166-02-35578

Citation: 2006 PSLRB 68



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

RONALD W. KAPPY

Grievor

and

**TREASURY BOARD
(Department of National Defence)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: Ian R. Mackenzie, adjudicator

For the Grievor: Cécile La Bissonière, PSAC

For the Employer: Daniel Cyr

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,
May 26, 2006.

REASONS FOR DECISION

[1] William Kappy is grieving the calculation of his pay under his salary protected status.

[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 documentation. The Agreed Statement of Facts reads as follows:

1. *At the time of the instant grievance, Mr. Kappy was an EG-03 Technical Services Officer, employed within the Canadian Forces Housing Agency (CFHA), Department of National Defence (DND), in Vancouver, British Columbia.*
2. *The applicable collective agreement is the Technical Services group agreement with an expiry date of June 21, 2003.*
3. *Prior to joining DND, Mr. Kappy was employed with Transport Canada, in Winnipeg, Manitoba. On April 5, 1995, he was notified that his position had been reclassified from GL-PIP-10-C3 to GL-PIP-10-C2 and that he would receive “Salary Protection Status” (Tab 1).*
4. *On June 20, 1996, Transport Canada notified Mr. Kappy that he was being declared surplus, with all the rights and benefits associated with the then current Work Force Adjustment Directive (Tab 2).*
5. *On November 29, 1996, Mr. Kappy was notified that he was going to be laid-off effective at the end of the day on December 31, 1996. However, he remained entitled to a priority appointment for positions in the Public Service of Canada for a period of one year (Tab 3).*
6. *In December 1996, Mr. Kappy was indeterminately appointed to a position of Canadian Forces Housing Authority Inspector (GL-COI-10) within DND, in Winnipeg, Manitoba (Tab 4). Mr. Kappy’s salary protection at the GL-PIP-10-C3 Group and level was maintained (Tab 5).*
7. *In October 2002, Mr. Kappy was offered and accepted an EG-03 Technical Services Officer position with the*

Canadian Forces Housing Agency in Vancouver, British Columbia (Tab 6).

8. *On October 31, 2002, Mr. Kappy filed the instant grievance against CFHA's decision to remove his salary protection. He requested that his salary protection as a GL-PIP-10-C3 remains in place (Tab 7).*
9. *On June 25, 2004, Mr. Kappy's grievance was upheld at the third level of DND's grievance procedure. Mr. Kappy's salary protection was to be reinstated at a GL-PIP-10-C3 rate of pay for the province of Manitoba (Tab 8). To this date, Mr. Kappy is still compensated at that level. He receives a yearly salary of \$60 028.27 (GL-PIP-10-C3, Manitoba rate) instead of the EG-03 salary of \$53 469 yearly.*
10. *Mr. Kappy's grievance was referred for adjudication by the PSAC in January 2005 (Tab 9).*
11. *Article 5.1.2 of Appendix "T" Work Force Adjustment of the Technical Services Collective agreement expiring June 21, 2003 (in force at the time of the grievance), reads as follows:*

5.1.2 Employees whose salary is protected pursuant to section 5.1.1 will continue to benefit from salary protection until such time as they are appointed or deployed into a position with maximum rate of pay that is equal to or higher than the maximum rate of pay of the position from which they were declared surplus or laid off.

The Operational Services collective agreement has the same provision.

[4] Mr. Kappy is requesting that he be paid at the regional rate of pay for British Columbia and not the regional rate for Manitoba. The grievor's representative, Cécile La Bissonière submitted that the intent of salary protection was to ensure that the employee did not lose any money. She also referred me to the grievor's reasons for requesting the British Columbia rate, contained in a statement prepared by Mr. Kappy:

My permanent place of residence is in Greater Vancouver

I belong to the UNDE Vancouver Local # 21008

I pay BC union dues to the Vancouver Local #21008

The Winnipeg GL-PIP 10 C3 classification and the Vancouver classifications are identical and do not constitute a position classification promotion

As stated in the follow up letter to me . . . dated January 8, 1997, pertaining to my original letter of offer to an indeterminate appointment with CFHA dated December 16, 1996, my salary will continue to be protected as long as I encumber my appointed position

The letter does not state that I am to be salary protected to the Manitoba pay scale only.

[5] The employer representative, Daniel Cyr, submitted that the salary protection was at the rate for the position from which the employee was declared surplus. The position from which Mr. Kappy was declared surplus was with Transport Canada in Manitoba.

[6] From a plain reading of the relevant provision of the collective agreement it is clear that the salary protection is based on the former position occupied by the employee prior to its reclassification. Accordingly, the salary protection is at the rate of pay applicable to Manitoba.

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

(The Order appears on the next page)

Order

[8] The grievance is dismissed.

June 1, 2006.

**Ian R. Mackenzie,
adjudicator**