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Citation: 2006 PSLRB 75



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

MONIQUE BEAUDRY, NICOLE GRAVELLE AND PIERRETTE LEBLANC

Grievors

and

**TREASURY BOARD
(Department of Human Resources and Skills Development)**

Employer

Indexed as

*Beaudry et al. v. Treasury Board (Department of Human Resources and Skills
Development)*

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 Grievor: Laurent Trudel, counsel

For the Employer: Stéphane Hould, counsel

Heard at Ottawa, Ontario,
September 26 and 27, 2005.
(P.S.L.R.B. Translation)

Grievances referred to adjudication

[1] Ms. Beaudry, Ms. Gravelle and Ms. Leblanc (“the grievors”) work as client services officers at the Department of Human Resources and Skills Development. They are classified at the PM-01 group and level.

[2] In fall 2000, the grievors noted that the salary of the CR-05 group and level was adjusted to a higher level than theirs, and that this was done retroactive to July 27, 1998. They claim that they were performing file processing functions similar to those performed by employees in the CR-05 group and level and, therefore, in fall 2000, filed three grievances asking the employer to pay them the salary of the CR-05 group and level as of July 27, 1998.

[3] There were a number of exchanges between the parties regarding the possibility of mediation and accelerated adjudication. After extensive delays, the grievances were referred to adjudication on January 7, 2004, and the hearing occurred in September 2005.

[4] On April 1, 2005, the new *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 former *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35.

Summary of the evidence

[5] At the start of the hearing, the employer pointed out that any matter relating to the classification of positions is beyond an adjudicator’s jurisdiction. This comment by the employer was not discussed, because the grievance of each of the three grievors deals with a request for compensation.

[6] The grievors are requesting to be paid at a higher level, that of CR-05, because they have allegedly been substantially performing the duties of the positions classified at this group and level since July 27, 1998. The adjudicator must therefore verify whether subclause 64.07(a) of the collective agreement entered into by the Treasury Board and the Public Service Alliance of Canada on May 16, 2000, with respect to the bargaining unit of the Program and Administrative Services Group supports their claims. Subclause 64.07(a) states:

64.07

- a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

...

[7] Ms. Beaudry explained that in her duties as a client services officer, she is required to meet with employment insurance clients and Income Security Program (ISP) clients. The ISP is different from social assistance. The ISP deals with old age security, guaranteed supplements, survivor's benefits, etc.

[8] Ms. Beaudry stated that, in 1998-1999, there was a merger between Health and Welfare Canada and the employment centres, so that now, in the same teams, there are employees who came from employment insurance and others from Health and Welfare Canada. Ms. Leblanc comes from employment insurance and received training on the ISP. In contrast, Ms. Gravelle comes from Health and Welfare Canada and completed her training in employment insurance. During the period covered by the grievances, all three grievors worked with Carol Danis, who dealt exclusively with the ISP.

[9] In 1996, the employer decided to staff the client services officer positions at the PM-01 group and level. There were two main elements in the staffing notice for the positions (Exhibit F-1): one was service to the client (status determination interview, information gathering and classification of facts), and the other was experience in processing claims. Subsequently, the pay of the three grievors was adjusted to the PM-01 level. At that time, they were dealing with employment insurance and ISP files. However, Mr. Danis remained classified at the CR-05 group and level and dealt only with ISP files. Mr. Danis' pay was then lower than that of the grievors by about \$1000 annually.

[10] As a result of an agreement entered into between the employer and the grievors' bargaining unit in 2000, employees classified at the CR-05 group and level saw their pay increase retroactive to July 27, 1998. This adjustment reversed the situation, since, as of that time, Mr. Danis (CR-05) received about \$1000 more annually than each of the three grievors.

[11] The grievors adduced various documents (Exhibits F-4, F-6, F-8 and F-10) to show the steps they had taken to gain recognition that the tasks they performed were similar to those of positions classified at the CR-05 group and level and, especially, that they looked after ISP files and processed employment insurance files.

[12] In fall 2000, Ms. Beaudry was informed that employees classified at the PM-01 group and level who go to Gatineau, Quebec, to process ISP files full time (as replacements or due to excess work) would be paid at the CR-05 group and level. It is Ms. Beaudry's opinion that, in her daily tasks, she not only does data entry, but also processes files, and that, as a result, she and the other two grievors should be paid at the CR-05 group and level. Ms. Beaudry sent an e-mail message to the employer on August 16, 2000, to this effect (Exhibit F-5). On September 19, 2000, the employer replied that it could not approve the request.

[13] Ms. Gravelle corroborated Ms. Beaudry's testimony. Ms. Gravelle added that she had pointed out to the employer that her job description did not mention processing ISP files and employment insurance files. The employer allegedly replied that, even taking these tasks into account, the classification of her position remained unchanged. Ms. Gravelle believes that she spends more than half of her time processing files. It is true that she receives clients, gathers information and enters data, but she also processes files.

[14] The situation changed in February 2001 when the employer sent a notice indicating the following: "[Translation] . . . as part of the gradual implementation of front-line service (ISP), [Human Resource Centres of Canada] officers from Gatineau will no longer handle transaction in the Old Age Security database". Thus, the possible comparison between the PM-01 and CR-05 groups and levels covers the period from June 27, 1998, to February 6, 2001.

[15] According to the grievors, during the period in question they substantially performed the tasks of their colleagues in the CR-05 group and level. In fact, their tasks consisted, on the one hand, of processing ISP files and, on the other hand, of providing client services related to employment insurance, data entry and file processing.

[16] Manon Courcelle, Director, Client Services, indicated that from 1998 to 2001 there were client services officers in Hull, Gatineau and even Maniwaki. After the

grievors made their claims, Ms. Courcelle requested a re-evaluation of their work description that took into account the fact that they were processing files. A classification consultant determined that taking the processing of said files into account did not alter the evaluation of their positions. This conclusion (Exhibit E-2) was accepted in 2002, which was after the grievances but before the grievances were referred to adjudication.

[17] Given that the grievors' grievances dealt with the performance of duties similar to those performed by employees classified at the CR-05 group and level, Ms. Courcelle prepared a report on the periods of work and the tasks performed from April 1, 1998 to November 26, 1998 (Exhibit E-5). This report shows that Mr. Danis processed 1146 ISP files while the grievor's processed between 454 and 522 files each. According to Ms. Courcelle, this sample is significant and shows that the processing of ISP files accounted for less than 40 percent of the grievors' time.

[18] To have a better overview of the situation, Ms. Courcelle prepared a report on the tasks performed by the grievors in 1999 and 2000 (Exhibit E-6). This summary shows that the time that the grievors spent with clients as part of the ISP accounted for between 30 and 40 percent of their time.

[19] As for the fact that some client services officers classified at the PM-01 group and level are paid at the rate of the CR-05 group and level, Ms. Courcelle testified that these employees voluntarily work full time on files from time to time.

[20] In rebuttal evidence, Ms. Beaudry testified in comment to the reports (Exhibits E-5 and E-6) prepared by Ms. Courcelle. Ms. Beaudry pointed out that often, to facilitate client access, she entered data at the end of her work day or the next day. She estimated that she devoted between 50 and 60 percent of her time to the ISP and file processing.

[21] Diane Mutchmore is a human resources officer. Her testimony covered the work descriptions. She pointed out that there were only draft work descriptions, nothing official.

Summary of the arguments

[22] The grievors claim that their work description was inaccurate because there is no mention of the work that they do under the ISP. In their opinion, a part of their functions is accounted for.

[23] Referring to the decision in *Beaulieu et al. v. Treasury Board (Federal Court of Canada)*, 2000 PSSRB 76, the grievors point out that an employee is not required to perform all of the duties of a higher position, but only to substantially perform the duties of that position, to be entitled to acting pay.

[24] For its part, the employer points out that the grievors' work description does not warrant a change in classification, even when the duties they performed under the ISP and the file processing are added in. Furthermore, the adjudicator does not have jurisdiction to decide matters of classification.

[25] The employer argues that case law establishes that the onus is on the grievors to show that they substantially performed the duties of a higher position. However, the evidence presented by Ms. Courcelle shows that the grievors performed less than 40 percent of the tasks assigned to the CR-05 group and level, which is far from enough.

Reasons

[26] The party that files a grievance for acting pay has the burden of proof. It is that party's responsibility to show that he or she substantially performs the duties of a higher-level position.

[27] The grievors testified that they performed tasks similar to those of their fellow workers classified at the CR-05 group and level. It is true that there is an overlap in their duties and those of Mr. Danis. One significant difference, however, lies in the fact that Mr. Danis performs all of his tasks under the ISP.

[28] In *Bungay et al. v. Treasury Board (Department of Public Works and Government Services)*, 2005 PSSRB 40 the adjudicator states as follows:

...

[71] *As noted in Moritz v. Canada Customs and Revenue Agency, 2004 PSSRB 147 (QL), the jurisprudence is clear that overlapping responsibilities with a higher classification does*

not have the effect of transforming the work into substantial performance of the higher level.

...

[29] In this case, the employer presented the conclusive evidence. The report on the grievors' time shows that they perform less than 40 percent of Mr. Danis' tasks. They therefore spend only part of their time on functions assigned to the CR-05 group and level. However, according to their testimony, the grievors believe that, during the rest of their time, they are performing the work of the CR-05 group and level because they do file processing.

[30] With respect to this point, we must remember that the portion of the grievors' tasks that is comparable to Mr. Danis' work is the file processing. In effect, after February 2001, they are no longer claiming to substantially perform work similar to that of their colleague. The employer's directive at that time (Exhibit F-3) states that Gatineau Human Resource Centres of Canada officers will no longer handle transactions in the Old Age Security database.

[31] The grievors' evidence with respect to this aspect of file processing is less convincing. They acknowledge that they spend a significant amount of time interviewing and entering data. They also report spending time processing files, even at the end of their work day and outside regular work hours. I find that these tasks add only some 10 to 15 percent to the comparable element of the work of their colleague classified at the CR-05 group and level. Accordingly, 40 percent of their time on the ISP and 10 to 15 percent of their time on tasks comparable to those of an employee classified at the CR-05 group and level cannot meet the requirement to substantially perform the duties of a higher position.

[32] It is true that the grievors do not have to demonstrate that they performed all of the duties assigned to the CR-05 group and level but only that they performed them substantially. Also, in *Bégin et al. v. Treasury Board (Revenue Canada, Taxation)*, PSSRB File Nos. 166-02-18911 to 18917 (1990) (QL), the adjudicator allows a grievance for acting pay because the grievors spent more than 70 percent of their time performing the duties of a higher position. In the case before us, we are well short of that percentage.

[33] It is true that the employer acknowledged that, in cases where employees classified at the PM-01 group and level agreed to work full time on file processing under the ISP, they were paid at the CR-05 group and level. Here, again, I do not see how I could treat the grievors in a similar manner when they are not substantially performing the work of a higher position.

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

(The Order appears on the next page)

Order

[35] The grievances are dismissed.

June 16, 2006.

**Jean-Pierre Tessier,
adjudicator**