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**File:** 166-34-36274

**Citation:** 2006 PSLRB 91



*Public Service Staff  
Relations Act*

Before an adjudicator

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BETWEEN

**ALEXANDRE CANTIN**

Grievor

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Cantin v. Canada Revenue Agency*

In the matter of a grievance referred to adjudication under section 92 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** Léo-Paul Guindon, adjudicator

***For the grievor:*** Frédéric Durso, counsel

***For the employer:*** Mylène Bouzigon, counsel

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Heard at Québec City, Quebec,  
February 9, 2006.  
(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] Alexandre Cantin (the “grievor”) filed a grievance on January 9, 2004, grieving the decision of what is now the Canada Revenue Agency (the “employer”) to deny him an increase to level 9 on the CS-01 pay scale at the expiration of the six-month period provided for in the collective agreement entered into on July 22, 2002, between the employer and the Professional Institute of the Public Service of Canada for the Audit, Financial and Scientific Group bargaining unit. The grievor asks that his salary be adjusted to the ninth rate on the CS-01 pay scale provided for in appendix “A” (CS) of the collective agreement.

[2] This grievance was referred to adjudication on June 17, 2005, under paragraph 92(1)(a) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (the “former Act”).

[3] 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 former Act.

Summary of the evidence

[4] The provisions of the collective agreement that are relevant to this grievance read as follows (Exhibit F-1) :

...

**APPENDIX “A”****CS  
PAY NOTES****PAY ADJUSTMENT ADMINISTRATION****1. Pay increment administration**

a) *The pay increment period for employees at level CS-1 shall be six (6) months at rates one to eight (1-8).*

b) *Notwithstanding clause (a), an increase from the third (3rd), fourth (4th) or fifth (5th) rate to the sixth (6th) rate, and from the seventh (7th) or eighth (8th) rate to the ninth (9th) rate shall become effective the date on which the Commissioner or his authorized representative certifies that the employee has attained the requirements specified by the Employer for payment at that rate with the pay increment date for*

*the employee calculated from the date the employee becomes entitled to that rate.*

- c) *Each pay increment period for rates nine to sixteen (9-16) of level CS-1 and the pay increment period at levels CS-2 to CS-5 inclusive shall be twelve (12) months.*

...

[5] The grievor had held a position as information technology analyst (CS-01 group and level) since January 17, 2002. When he was hired, his pay rate was fixed at rate 3 on the CS-01 pay scale set out in appendix "A" (CS) of the collective agreement. An adjustment was made on June 9, 2003, increasing his pay to rate 6 on the pay scale, retroactive to his date of hiring (Exhibit F-3). According to his testimony, all employees in the CS-01 group and level perform the same duties regardless of pay rate.

[6] The application of subclause 1(a) of appendix "A" (CS) of the collective agreement resulted in the grievor's pay rate being adjusted to rate 7 on the pay scale after a six-month period beginning on January 17, 2002 — i.e. on July 17, 2002. A second adjustment to rate 8 was made on January 17, 2003. The grievor expected that his pay level would be raised to rate 9 after another six-month period — i.e. on July 17, 2003.

[7] The interpretation of the increases in pay levels by the employer's Human Resources Service was presented as follows to the assistant directors, Information Technology (ADIT), in a conference call on March 5, 2003 (Exhibit F-2):

[Translation]

...

*Rates 1 to 3 - automatic increase every 6 months.*

*Rates 3 to 6 - on recommendation by management to H.R. - 6 months or less.*

*Rate 6 to 7 - increase every 6 months.*

*Rate 7 to 8 - less than 6 months or indefinite.*

*Rate 8 to 9 - indefinite*

*Rates 9 and over - automatic every year.*

**Action:** *The ADIT agree that for all rates the increase be made every 6 months up to rate 9, and every year for rate 9 and over.*

...

[8] The grievor was informed in November 2003 by Michel Lavigne, acting ADIT, Quebec region, that passing to rate 9 on the CS-01 pay scale happened after a 12-month period. On April 22, 2003, Denis Richard, Regional Director, Information Technology, Quebec region, authorized an automatic increase in rate for CS-01 group and level employees every six months in the case of rates 1 to 8, and every 12 months in the case of rates 8 to 16 (Exhibit E-1). The authorization became effective on April 1, 2003.

[9] The following excerpt from the collective agreement that formerly applied to the CS group was filed in evidence at the hearing (Exhibit F-4):

...

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**44.06**

- a) *The pay increment period for employees at level CS-1 shall be six (6) months between rates one to eight (1-8).*
- b) *Notwithstanding sub-clause 44.06(a), an increase from the third (3<sup>rd</sup>), fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) rate to the sixth (6<sup>th</sup>) rate, and from the seventh (7<sup>th</sup>) or eighth (8<sup>th</sup>) rate to the ninth (9<sup>th</sup>) rate shall become effective the date on which the deputy head certifies that the employee has attained the requirements specified by the Employer for payment at that rate with the pay increment date for the employee calculated from the date the employee becomes entitled to that rate.*
- c) *Each pay increment period for rates nine to thirteen (9-13) of level CS-1 and the pay increment period at levels CS-2 to CS-5 inclusive shall be twelve (12) months.*

...

[10] Martin Raymond, ADIT, Quebec region, testified that the pay increment period is six months for rates 1 to 8 on the CS-01 pay scale, according to his interpretation of subclause 1(a) of appendix "A" (CS) of the collective agreement. Similarly, he explained that the pay increment period was 12 months for rates 9 to 16 according to subclause 1(c) of appendix "A" (CS). Subclauses 1(a) and (b) do not, in his opinion, specify the length of the period required to pass from rate 8 to rate 9. Thus, he interpreted subclause 1(b) as authorizing the employer's chief executive officer or his

representative to determine the employer's "prescribed conditions" so that an employee can move from rate 8 to 9. Moreover, the witness explained that the employer's Human Resource Service had determined, according to the minutes of the telephone conference of March 5, 2003 (Exhibit F-2), that the period for movement from rate 8 to rate 9 was indefinite.

[11] Mr. Raymond explained in his testimony that movement from rate 8 to rate 9 on the CS-01 pay scale is a crucial stage in the career of an employee in the CS-01 group and level. Rates 1 to 8 are "entry" levels, while rates 9 to 16 are "working" levels. At rate 9, an employee in the CS-01 group and level must have acquired all the knowledge and experience needed to work independently and to be able to perform all the duties of an information technology analyst. According to him, after a 12-month period an employee in the CS-01 group and level reaches that level of independence. An employee whose performance is above average can obtain an exemption and an increase in his or her rate after less time than the normal six- or twelve-month periods.

#### Summary of the arguments

##### For the grievor

[12] The evidence shows that all employees in the CS-01 group and level perform the same duties whatever their pay rate. Subclause 1(b) of appendix "A" (CS) of the collective agreement confers a benefit on employees by permitting them to "jump" increments and receive more pay when they meet the prescribed conditions.

[13] Mr. Raymond explained that the condition prescribed by the employer for moving from rate 8 to rate 9 on the CS-01 salary scale is met after a 12-month period. The witness did not explain in what way this period allows an employee in the CS-01 group and level to acquire the degree of independence necessary to move to the next rate. This way of interpreting subclause 1(b) of appendix "A" (CS) of the collective agreement deforms the wording of this provision, which gives an employee the privilege of being able to reach the higher rates more quickly. This provision does not specify that the acquisition of the necessary level of independence is to be the subject of an evaluation.

[14] The "Terms and Conditions of Employment Regulations" published in appendix "A" of the Treasury Board Secretariat's *Terms and Conditions of Employment Policy* provides that a pay increase may be withheld if the employee is not performing their

duties satisfactorily (section 40.1). The employer's interpretation, which imposes an obligation on the grievor to show that he meets specific conditions in order to attain the higher pay rate, contradicts the provisions of these regulations.

[15] Appendix "A" (CS) of the collective agreement specifies, for part-time employees in the CS-01 group and level, that movement to a higher rate on the salary scale, up to rate 8, takes place after 975 hours. For rates 9 to 15, 1950 hours are needed to move to the higher rate (subclauses 2(a) and (b); Exhibit F-1). Appendix "A" (CS) of the collective agreement does not provide that part-time workers must meet the conditions prescribed by the employer in order to move to a higher rate. Thus, the result of the employer's interpretation is to make the administration of pay unfair to full-time employees, because they alone must meet the prescribed conditions.

For the employer

[16] Appendix "A" (CS) of the collective agreement provides for two kinds of pay increments: an "entry" level, for rates 1 to 8, and a "working" level, for rates 9 to 16. Appendix "A" (CS) determines a specific form of progression for each of these two groups: after a six-month period for the first group and after a 12-month period for the second.

[17] Appendix "A" of the collective agreement provides for pay increment periods (six months) for employees in development in the CO group that are different from those for full-time employees (12 months) (page 78, Exhibit F-1). For employees in the CH group, the collective agreement provides for a performance evaluation in order to access the higher pay rates (section 9, page 76, Exhibit F-1). In this way, the collective agreement provides that an employer may verify whether an employee meets the prescribed conditions for accessing a higher pay rate for other groups, just as it does for employees in the CS group.

[18] The Treasury Board Secretariat's Terms and Conditions of Employment Policy do not apply to the employer because it is a separate employer.

[19] The pay increment administration regimes are different for full-time employees in the CS group than for those who are part-time, as the collective agreement provides. The particular system for moving from rate 8 to rate 9 for full-time CS-01 group and level employees gives the employer the power to determine the prescribed conditions

for moving from rate 8 to rate 9 on the CS-01 pay scale, according to subclause 1(b) of appendix “A” (CS) of the collective agreement. In determining that the period is 12 months, the employer has exercised its discretion and has not applied it arbitrarily, as exceptions are permitted.

Reply of the grievor

[20] There is no evidence to show that the move from the eighth rate to the ninth rate of the CS-01 pay scale is a “crucial” moment in the career of an employee in the CS-01 group and level. The employer’s discretion with regard to the level of pay can be exercised only on appointment, and progression within the salary scale is not discretionary but is, instead, subject to the provisions of the collective agreement.

[21] The 12-month period authorized by Mr. Richard on April 22, 2003 (Exhibit E-1), is not consistent with the provisions of the collective agreement. The collective agreement provides that the employer must determine whether an employee meets the prescribed conditions, which the employer failed to do when he applied a 12-month period for moving from rate 8 to rate 9 of the CS-01 pay scale.

Reasons

[22] The grievor asks to have the six-month pay increment increase period applied to him so that he would be paid at rate 9 on the CS-01 pay scale beginning on July 17, 2003, pursuant to subclause 1(a) of appendix “A” (CS) of the collective agreement. The grievor has the onus of showing that his grievance is well founded.

[23] The employer is a separate employer listed in Part II of Appendix I of the former *Act*. Under subsection 30(2) and paragraph 30(1)(d) of the *Canada Revenue Agency Act*, S.C. 1999, c. 17, the employer is not subject to the regulations or requirements of the Treasury Board as they relate, among other things, to the management of its human resources and, in particular, to the determination of its terms and conditions of employment. Consequently, the employer cannot be subject to the Treasury Board Secretariat’s Terms and Conditions of Employment Policy, on which the grievor has based part of his argument.

[24] The issue essentially bears on the interpretation and application of appendix “A” (CS) of the collective agreement, which deals with pay adjustments for information technology analysts in the CS-01 group and level.

[25] Subclause 1(a) provides that “[t]he pay increment period . . . shall be six (6) months at rates one to eight (1-8)”. This provision states that the six-month period for an increment increase applies to rates 1 to 8, which means that it applies to employees paid at each of these rates, including the eighth. In order for the pay increment period not to apply to employees paid at rate 8, the parties would have to have written “between” rates 1 to 8, as in subclause 1(c), which would exclude an increment increase for employees paid according to the eighth rate. Thus, subclause 1(a) must be interpreted so as to give it its full meaning; that is to say, that the six-month period also applies to employees paid at rate 8 in relation to an increase to rate 9.

[26] This interpretation is confirmed by the different terms used in subclause 1(c) of Appendix “A” (CS), which specifies that the pay increment period is 12 months “between” rate 9 and rate 16. The term “between” necessarily implies that the pay increment period is limited by the extremes specified and cannot be applied to a rate below 9 or greater than 16. Thus, the last increment level of the increase applies from rate 15 to rate 16. The lower level cannot be below rate 9, which is to say that the first increase to which the 12-month period applies is from rate 9 to rate 10. Furthermore, examination of the CS-01 pay scale (page 83, Exhibit F-1) reveals that the last rate is the sixteenth.

[27] Thus, the parties, by using terms for rates 1 to 8 different from those for rates 9 to 16, clearly intended to establish different ways of administering pay increments for each of the two sets of rates. By assigning different pay increment periods to them, the parties established a faster system (every six months) for increases in the lower rates than for in the higher rates (every 12 months), the maximum being attained at level 16.

[28] Subclause 1(a) of appendix “A” (CS) lets the employer determine whether an employee meets the “prescribed conditions” for being paid at a particular rate in accordance with the following possibilities:

1. from the third, fourth or fifth rate to the sixth rate
2. from the seventh or eighth rate to the ninth rate.

[29] Thus, where the employer determines that an employee meets the “prescribed conditions”, it is possible to pay him or her at a higher rate on a set date. Such an increase is only possible for reaching the sixth or ninth rate. In the case before me, the



employer did not exercise its discretion to determine whether the grievor had met the prescribed conditions referred to in subclause 1(b) of appendix “A” (CS) on a different date from the date provided for in subclause 1(a).

[30] According to subclause 1(b) of appendix “A” (CS), these increases in pay rates, granted at the discretion of the employer, are made “notwithstanding” subclause 1(a), that is, by ignoring the rights and obligations set out in that provision. This wording therefore implies that subclause 1(a) confers a right to the increase in pay increment from rate 8 to rate 9.

[31] There is no need to turn to clause 44.06 of the previous collective agreement (Exhibit F-4) to discern the parties’ intention; the wording of appendix “A” (CS) is clear. In these circumstances, it is not necessary to consider evidence extrinsic to the collective agreement applicable to the grievance in order to ascertain the parties’ intention.

[32] For the above reasons, the employer’s interpretation that the pay increment period for the increase from rate 8 to rate 9 can be determined only on the basis of subclause 1(b) of appendix “A” (CS) is not founded.

[33] For the above reasons, I make the following order:

*(The Order appears on the next page)*

Order

[34] The grievance is allowed.

[35] I order the employer to adjust the grievor's pay to rate 9 on the CS-01 pay scale, retroactive to July 17, 2003, and to pay to the grievor all arrears of wages resulting from this adjustment within 30 days from the date of this decision.

[36] I also order the employer to make corresponding adjustments to any other of the grievor's benefits related to his pay rate within 30 days from the date of this decision.

July 21, 2006.

**Léo-Paul Guindon,  
adjudicator**