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File: 166-02-35430

Citation: 2007 PSLRB 27



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

HÉLÈNE LEBOEUF

Grievor

and

**TREASURY BOARD
(Department of Transport)**

Employer

and

PUBLIC SERVICE ALLIANCE OF CANADA

Intervener

Indexed as

*Leboeuf v. Treasury Board (Department of Transport) and Public Service Alliance of
Canada*

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act

REASONS FOR DECISION

Before: Michele A. Pineau, adjudicator

For the Grievor: Frédéric Durso, Professional Institute of the Public Service of
Canada

For the Employer: Mark Sullivan, Treasury Board Secretariat

For the Intervener: Jacquie de Aguayo, Public Service Alliance of Canada

Decided on the basis of written submissions.

(P.S.L.R.B. Translation)

Grievance referred to adjudication

[1] The Public Service Labour Relations Board (“the Board”) has before it a grievance through which H el ene Leboeuf (“the grievor”) contests her work description by requesting a review of point (7), which, in her opinion, does not indicate the technical knowledge required to perform her duties. Ms. Leboeuf is represented by the Professional Institute of the Public Service of Canada (PIPSC).

[2] On April 1, 2005, the *Public Service Labour Relations Act* (“the new Act”), enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Since this grievance was referred to adjudication on December 1, 2004, section 61 of the *Public Service Modernization Act* requires that it be decided 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 employer’s written submissions

[3] Before presenting this grievance, Ms. Leboeuf held a CS-02 client technical support position at Transport Canada. That position was in the Information Technology Division, Finance and Administration Branch, Quebec Region.

[4] On May 2, 2003, Ms. Leboeuf presented a grievance requesting that her duties be updated. In reply, the Director General, Human Resources, as the deputy head, allowed the portion of the grievance requesting that Ms. Leboeuf be given the current version of her duties. She was given that version on June 11, 2003.

[5] Between June 11 and December 17, 2003, there were ongoing consultations to update the work description in question. Ms. Leboeuf made her last comments on October 24, 2003. On December 17, 2003, her manager told her that the final version of the description would be sent to the Human Resources Directorate. On January 22, 2004, at the classification advisor’s request, Ms. Leboeuf signed a revised version of the work description on which she wrote “[translation] without prejudice to my right to grieve.”

[6] On February 19, 2004, Ms. Leboeuf was notified in writing that, following the review of the new work description, she was moving from the CS-02 level down to the AS-03 level and that this new classification would be effective as soon as she acknowledged receipt of the notice. Ms. Leboeuf was also informed that she would

retain the rate of pay applicable to her CS-02 position, in accordance with the Treasury Board's *Salary Protection Policy*. Ms. Leboeuf acknowledged receipt of the letter on February 25, 2004. The same day, she presented the grievance that is the subject of this decision, which is worded as follows:

[Translation]

I contest the work description given to me on February 19, 2004, especially point (7), Job Content Knowledge Application, which is incomplete and provides little indication of the technical knowledge required to perform my responsibilities.

The requested corrective action is as follows:

[Translation]

I request that my work description be reviewed and corrected so that it reflects my responsibilities at the time I made my initial request, that is, April 2, 2003.

[7] On March 23, 2004, the employer offered Ms. Leboeuf another position, as an information technology support analyst at the CS-02 level. She accepted the position on March 31, 2004 and has held it since. Ms. Leboeuf did not lose any earnings or other benefits during the month between the reclassification of her former position and the acceptance of her new position, that is, between February 25 and March 23, 2004.

[8] The employer argues that this case involves the Public Service Alliance of Canada (PSAC) because the new classification created by the work description falls within the Administrative Services (AS) group, a subgroup of Program and Administrative Services. If the grievance proceeds to adjudication, the Board adjudicator dealing with the case will have to make a decision concerning a work description for which the PSAC is the certified bargaining agent. The employer therefore argues that, since the PIPSC is not the certified bargaining agent for the AS group, it cannot refer the grievance to adjudication under subsection 92(2) of the former *Act*. For the grievance to be accepted and heard by the Board, it must be approved by the certified employee organization, namely the PSAC. However, the PSAC did not approve the reference of this grievance to adjudication.

[9] The employer also argues that it took steps to remedy the situation and limit the impact on the grievor during the month after she acknowledged receipt of the

classification decision by offering her a CS-02 position. At the present time, Ms. Leboeuf no longer holds the AS-03 position that is the subject of the grievance, which means that the requested corrective action is no longer relevant. The Board has no jurisdiction over classification except where the collective agreement gives it such jurisdiction, which is not the case here. The employer submits that I should dismiss the grievance without holding a hearing.

[10] In response to the particulars provided by the PIPSC, the employer adds that it objects to any request to amend the grievance during adjudication. Moreover, the employer argues that Ms. Leboeuf's grievance involves only a debate over point (7) of the work description that gave rise to the grievance. A decision in the grievor's favour would only change point (7), which would not invalidate the classification decision of February 23, 2004. The employer submits that, whatever the decision made by an adjudicator, the classification and the work description at issue will, for all practical purposes, remain unchanged. The employer therefore maintains that the PSAC continues to have an interest in this case and should have an opportunity to state its position.

Summary of the PIPSC's written submissions

[11] The facts stated by the employer are not contested, only the employer's interpretation of those facts. The PIPSC notes that Ms. Leboeuf's grievance has to do with obtaining a current, up-to-date work description, as her collective agreement allows her to do, and that this is a question of interpretation within the jurisdiction of the Board and the adjudicator. The grievance does not raise a classification issue. The PIPSC therefore asks that this argument by the employer be rejected.

[12] The PIPSC maintains that the grievance originated with Ms. Leboeuf's precaution of writing "[translation] without prejudice to my right to grieve" beside her signature when she was given the final version of the work description. At the time she signed, Ms. Leboeuf held a CS-02 position and was subject to the collective agreement for the CS group entered into by the PIPSC and the Treasury Board; the right to grieve had not expired. The PIPSC is therefore of the opinion that the collective agreement applicable to Ms. Leboeuf at the time she presented the grievance was the CS group agreement and that it was the bargaining agent.

[13] The PIPSC argues that it intends to amend the grievance at the time of adjudication. When the file was being prepared for adjudication, it was noticed that a mistake had been made in drawing up the grievance. The grievance refers to the work description received on February 25, 2004, when in fact Ms. Leboeuf signed it on January 22, 2004.

[14] The PIPSC has difficulty understanding why the employer is insisting to the Board that the PSAC must intervene since, if the adjudicator allowed this grievance and amended its content, it would be essential that the work description amended by the adjudication decision be the subject of a new classification decision. A favourable decision by the adjudicator would have the effect of invalidating the classification decision of February 25, 2004 that moved the grievor from the CS group to the AS group. The PIPSC argues that the PSAC's interest is based solely on the new classification and not on the content of the work description. As a result, the PSAC does not have the necessary interest to justify its intervention in this case.

[15] In the PIPSC's opinion, the employer's comments on the fact that there was no loss of earnings and on the outcome of the grievance are unfounded and irrelevant, since the grievor simply exercised the right to obtain a current, up-to-date work description, as the collective agreement applicable at the time allowed her to do.

[16] The PIPSC rejects the employer's argument that Ms. Leboeuf waived any right of redress regarding the AS-03 position, since the grievance does not concern the AS-03 position. Rather, the PIPSC believes that Ms. Leboeuf was forced to accept the CS-02 position on March 31, 2004 because otherwise she would have lost her salary protection. The PIPSC argues that, while Ms. Leboeuf was performing the AS-03 duties, she did the same work at the same workstation and supervised the same CS-01 employees as before. This suggests that the employer was acquiescing to the fact that the position remained at the CS-02 group and level.

[17] The PIPSC requests that the employer's objections be dismissed and that the grievance be heard by an adjudicator without the PSAC being asked to intervene.

Summary of the PSAC's written submissions

[18] The PSAC notes that, on February 5, 2004, Ms. Leboeuf's position of client technical support analyst was revised from the CS-02 group and level to the AS-03

group and level. The PSAC submits that it is the exclusive bargaining agent for positions in the AS group.

[19] Under the former *Act*, only the bargaining agent is entitled to make the references to adjudication that it approves. The PSAC neither approved Ms. Leboeuf's grievance nor referred it to adjudication. An adjudicator appointed under the former *Act* therefore has no jurisdiction to hear this grievance.

[20] On January 16, 2007, the PSAC sent the Board an email changing its initial position. It argued that when Ms. Leboeuf received the new work description, she had a right to present a grievance for 25 days. It acknowledged that Ms. Leboeuf's right to grieve as a PIPSC member still existed on February 25, the date she presented the grievance.

Reasons

[21] What the grievor is requesting in her grievance is a review of an item in a work description with which she disagrees.

[22] Since presenting her grievance, the grievor has moved out of the position to which the work description in question applies. She now has another permanent position at the same level as before. She did not lose any earnings or other benefits during the month between the downward reclassification of her former position and the acceptance of her new position. This means that the dispute that gave rise to the grievance has become theoretical.

[23] Because of this combination of circumstances, the real issue that arises is whether I should exercise my discretion to decide the merits of the grievance now that it has become moot.

[24] The doctrine of mootness derives from the general legal principle that a court may decline to decide a case that raises only a hypothetical question. In *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, the Supreme Court of Canada stated the following about the basis for this doctrine:

[15] The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which

affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice. . . .

[16] The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term “moot” applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the “live controversy” test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[25] The first part of my analysis involves deciding whether the “tangible and concrete dispute” referred to in *Borowski* still exists. In other words, is the disputed point in the work description about which the grievor is complaining a live controversy?

[26] In this case, the grievor accepted a permanent position to which the work description being grieved does not apply. The fact that the position is permanent precludes the possibility of the grievor returning to the position to which the grievance relates. The result of this is that the tangible and concrete dispute has disappeared, so the response to this question must be negative.

[27] The second part of my analysis involves deciding whether, despite being moot, the issue raised by the grievance is nonetheless important enough to justify the exercise of my discretion to hear the case.

[28] The grievor is complaining that a point in a revised work description does not properly indicate the technical knowledge required to perform her duties. Since neither the employer nor either bargaining agent is arguing that this issue has broader

application, the issue is essentially personal to the grievor. Resolving it therefore has no long-term consequences and does not serve to decide an essential question for a significant part of the public service.

[29] Moreover, the Board has limited resources to fulfill its mandate. Although the grievance is governed by the former *Act*, the preamble to the new *Act* governing the Board's current operation sets out three aspects of its mission that are relevant to this case:

Recognizing that

the public service labour-management regime must operate in a context where protection of the public interest is paramount;

effective labour-management relations represent a cornerstone of good human resource management . . .

. . .

commitment from the employer and bargaining agents to mutual respect and harmonious labour-management relations is essential to a productive and effective public service;

[30] Needless to say, the Board must make judicious use of its resources in meeting these objectives, namely protecting the public interest, encouraging harmonious labour-management relations and creating a productive and effective public service.

[31] A more general principle can be added to these statutory principles, namely that as an administrative tribunal, the Board must play a role in developing consistent law. I must therefore consider whether exercising my discretion to hear this case would help fulfill the objectives set out in the new *Act*, make judicious use of the resources allocated for that purpose and advance the law.

[32] In this case, the adversarial context in which the parties initially had an interest no longer exists. The issue submitted is very limited in its effects. Even if the grievance is successful on the merits, my decision will not change the grievor's current situation in any way. In short, the change in the grievor's situation since she presented her grievance at the first level of the grievance procedure has served to eliminate the tangible nature of the issue.

[33] Accordingly, it is my view that I should not exercise my jurisdiction to hear a case that does not contribute to fulfilling the Board's objectives, that does not make judicious use of the Board's resources and that does not advance the law in any way.

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

(The Order appears on the next page)

Order

[35] The grievance is dismissed.

March 5, 2007.
P.S.L.R.B. Translation

**Michele A. Pineau,
adjudicator**