

Date: 20071010

File: 569-34-1

Citation: 2007 PSLRB 105



*Public Service  
Labour Relations Act*

Before a Board Member

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BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**

Bargaining Agent

and

**CANADA REVENUE AGENCY**

Employer

Indexed as:

*Public Service Alliance of Canada v. Canada Revenue Agency*

In the matter of a reference under section 99 of the *Public Service Staff Relations Act*

**REASONS FOR DECISION**

**Before:** Michele A. Pineau, Board Member

**For the Bargaining Agent:** James G. Cameron, counsel

**For the Employer:** Harvey A. Newman, legal advisor and Neil McGraw, counsel

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Heard at Québec, Quebec,  
September 11, 2007.  
(P.S.L.R.B. Translation)

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**Policy grievance referred to adjudication**

[1] This decision concerns a reference to adjudication made on July 30, 2004 by the Public Service Alliance of Canada (PSAC) under section 99 of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (“the former Act”), regarding Lynda Joan Fortin.

[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 (“the PSMA”), was proclaimed in force. In a September 26, 2005 notice, issued in another case also having to do with section 99 of the former Act, Mr. Yvon Tarte, former Chairperson of the Public Service Labour Relations Board (“the Board”), found that, given the wording of the transitional provisions of the PSMA, it was preferable for a matter initiated under section 99 of the former Act to be continued before the new Board under that Act. Accordingly, in a March 22, 2007 letter, the Board informed the parties that this matter would be dealt with under the former Act.

**Summary of the evidence**

[3] The PSAC is the bargaining agent certified by the Board to represent the employees of the Canada Revenue Agency (“the CRA” or “the employer”) in the Program and Administration Services Group bargaining unit.

[4] The details of the reference to adjudication and the corrective action requested were set out in a joint statement as follows:

[Translation]

- 1) Ms. Fortin occupied a communications manager (IS-04) position with the communications team at the Quebec Regional Office.
- 2) On April 22, 2002, Ms. Céline De Guise, Acting Director of Communications, Quebec Regional Office, notified Ms. Fortin that, following a restructuring of the communications team at the Quebec Regional Office, her position would be transferred to Montréal.
- 3) On June 28, 2002, the employer confirmed in writing that Ms. Fortin’s position would be transferred to Montréal and that regarding employee relocation, under clause 3.1.2 of Part III of Appendix “E” of the collective agreement in force, she was required to inform the employer whether she wished to be relocated with her work unit to Montréal within six months.

- 4) Ms. Fortin contacted the Director of the Financial Services Office (FSO) in Québec to determine whether there were any vacant positions in the Québec area.
- 5) The Director informed Ms. Fortin that there was a Trust Account Examiner (PM-02) position vacant at the FSO in Québec but that he could not offer it to her with wage protection.
- 6) In November 2002, Ms. Fortin informed the union local that there was a PM-02 position available at the FSO in Québec but that it could not be offered to her with wage protection.
- 7) The union did not share the employer's interpretation of the collective agreement and recommended that Ms. Fortin formally ask the employer to offer her the PM-02 position with wage protection.
- 8) On December 20, 2002, on the advice of the national union, Ms. Fortin notified the employer in writing that she did not wish to be relocated to Montréal. Ms. Fortin also asked to be declared surplus and at the same time to receive a letter containing a reasonable offer of employment in the PM-02 position at the FSO in Québec with wage protection.
- 9) In January 2003, Ms. De Guise notified Ms. Fortin that she would remain in her substantive position until the employer could make her a reasonable offer of employment.
- 10) On April 7, 2003, the employer notified Ms. Fortin in writing that, because of her refusal to be relocated to her position in Montréal, she was considered surplus and awaiting a reasonable offer of employment.
- 11) In the same letter, in response to Ms. Fortin's request for a reasonable offer of employment at the PM-02 level, the employer quoted clause 1.1.14 of Appendix "E" of the collective agreement in force, which was a clause regarding employee relocation, and informed Ms. Fortin that, in light of that clause, offering her the Trust Account Examiner (PM-02) position was not an option for the employer.
- 12) On April 17, 2003, Ms. Fortin asked the employer to appoint her to a PM-02 position at the FSO in Québec at the highest level.
- 13) On April 17, 2003, Ms. Fortin accepted an indeterminate Recovery Officer (PM-02) position with the Revenue Recovery Division at the FSO in Québec.
- 14) The voluntary demotion came into effect on April 28, 2003.
- 15) On September 8, 2003, the employer notified the PSAC that Ms. Fortin was an employee referred to in Appendix "E" of the collective agreement in force regarding employee relocation.

[5] In its application for a referral to adjudication, the PSAC asked that the Board order the CRA to fulfill its obligations under section 9 of Appendix "E" of the collective agreement expiring on October 31, 2003 between the CRA and the PSAC for the Program and Administrative Services Group and that the Board make any other order that it chooses.

[6] The parties have jointly asked the Board to render a decision in this case without holding a public hearing and have agreed that it would be equitable for the Board to make the following statement:

[Translation]

*Although the union local was involved in the case starting in November 2002 and the national union starting in December 2002, the parties agree that the employer failed to fulfill its obligations under clause 1.1.9 of Appendix "E".*

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

*(The Order appears on the next page)*

**Order**

[8] The reference to adjudication is allowed to the extent indicated.

October 10, 2007.

P.S.L.R.B. Translation

**Michele A. Pineau,  
Board Member**