

Date: 20070717

File: 166-02-35692

Citation: 2007 PSLRB 72



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

GREGORY THOMAS BLACK

Grievor

and

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

Employer

Indexed as

Black v. Treasury Board (Department of National Defence)

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

REASONS FOR DECISION

Before: D.R. Quigley, adjudicator

For the Grievor: Laurin Mair, Public Service Alliance of Canada

For the Employer: Karen Clifford, counsel

Heard at Edmonton, Alberta,
February 14, 2007.

REASONS FOR DECISION

I. Grievance referred to adjudication

[1] Gregory Thomas Black (“the grievor”) is currently employed at Transport Canada at the PM-04 level. At the time that he filed his grievance, on June 11, 2002, he was working with the Canadian Forces Housing Agency (CFHA) at the Department of National Defence (DND). His grievance reads as follows (Exhibit G-2):

...

I grieve the effective date of my former position (Technical Services Officer, EG-3). I have been performing these duties since April 15, 1996, when I first came to work for CFHA.

In my reclassification grievance, Pg 2, Ref. No #00-E-CFHA-05, I stated “All of these characteristics have been part of my duties since April 15, 1996.” Copy of original grievance att.

CORRECTIVE ACTION REQUESTED

I want an accurate effective [sic] of April 15, 1996 and I request all benefits that are associated with this effective date.

...

[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.

[3] The grievor testified, and his representative filed 13 exhibits. Counsel for the employer called one witness and filed eight exhibits.

II. Summary of the evidence

[4] On April 15, 1996, following a workforce adjustment situation, the grievor relocated from North Bay, Ontario, to Edmonton, Alberta, to accept a position with the CFHA as a housing and property inspector at the GL-COI-10 group and level.

[5] On October 31, 2000, the grievor was informed by A.D. (Al) Grier, Housing Manager, CFHA Edmonton, that the work description for his position as a housing and property inspector at the GL-COI-10 group and level had been reviewed, and the results of the classification review were that it would remain at the same group and level (Exhibit E-1). The grievor was also informed that he was entitled to grieve this decision, which he did on December 14, 2000 (Exhibit G-1).

[6] On May 17, 2001, the grievor received a letter (Exhibit E-2) from Jacques Taky, General Manager, Operations, DND Headquarters, in response to his grievance. In his letter Mr. Taky stated that it had been determined that the work description for the housing and property inspectors might not reflect all their duties and responsibilities. Mr. Taky requested that the grievor meet with Mr. Grier to develop a work description that accurately reflected his duties and responsibilities. He also indicated that once the duties were mutually agreed on, a classification review would proceed. According to the grievor, he met with Mr. Grier to discuss the matter.

[7] On January 24, 2002 (Exhibit G-9), Sylvie Lemieux, General Manager, Housing Operations, sent an email to the housing inspectors in which she stated that she appreciated the level of patience that they had exercised during the reclassification process that had been, in the grievor's words, "ongoing for over two years".

[8] On April 15, 2002 (Exhibit G-10), Jane Roszell, Chief Executive Officer, CFHA, sent an email to all staff in which she provided an update on recent developments affecting the CFHA's organizational structure. In her email, Ms. Roszell stated, among other things, that the GL-COI-10 positions would be reclassified to the EG-03 group and level and that they would be given a new title, "Technical Services Officer" (TSO). The grievor stated that the following excerpt from Ms. Roszell's email was inaccurate:

...

HMO Inspectors

The position of HMO Inspector has evolved from a routine application of maintenance standards ensuring a secured housing envelope, to its current requirements including a larger emphasis on Health & Safety concerns. The Agency also has a desire that HMO Inspector positions be consistent at all sites.

...

*All current CFHA employees who are at the GL-COI-10 group and level will be reclassified to the EG-03 group and level with a new title of **Technical Services Officer**. . . .*

. . .

Although the EG designation does require different skills sets and in many cases accreditation, this will only be required for future staffing. The reclassified GL-COI-10s will be given the opportunity to obtain accreditation. We are currently working on the development of a bilingual recruitment and training program for HMO Inspectors. More information on this program will be available in the coming months.

. . .

[Emphasis in the original]

[9] The grievor stated that his duties had not changed and that health and safety concerns were always an important factor in the performance of his duties (i.e. in asbestos abatement). He also noted that he was never required to learn different skills or to be accredited in a specific subject matter.

[10] The grievor stated that it was because of Ms. Roszell's email that he became aware that the GL-COI-10 positions would be reclassified to the EG-03 group and level.

[11] The grievor explained that, prior to his position's reclassification, he had prepared and forwarded supporting documents to DND Headquarters (Exhibit G-6) validating prior work orders and correspondence that reflected the key activities and specific duties he performed as of his initial hiring date.

[12] As a result of Exhibit G-6, on May 7, 2002, Mr. Grier provided the grievor with an "Attestment of Effective Date" (Exhibit G-8), a document that the DND had used to validate the new work description and the effective date of the reclassification to the EG-03 group and level. The grievor explained that under "Key Activities", at section C ("Prepare business and technical plans, reports, data and other documents and information"), it indicated that he had assumed this duty in June 1999. For sections A, B, D and E, it indicated that he had assumed those duties on his initial hiring date (April 15, 1996).

[13] With respect to the following specific duties, it indicated that they had been assumed by the grievor in June 1999:

- 1. Develop long-term plans and reports.
- 14. Support the study and evaluation of new processes and techniques and the design, implementation, management and evaluation of projects.
- 16. Plan, organize and oversee maintenance and improvement projects/contracts.
- 18. Develop projects schedules.
- 19. Review project/contract terms with contractors.
- 20. Monitor project work and certify completed work.
- 22. Develop annual and longer-term and special project plans and cost assessments.
- 23. Prepare costing, cost/benefit and risk analysis to support resources and business planning requirements.

[14] The remaining specific duties (2 to 13, 15, 17, 21, 24, 26, 27 and 29 to 34) were indicated as having been assumed by the grievor on his initial hiring date. For specific duty 25, it was indicated as “not sure [of the] date”, and specific duty 28 was marked as “not performed”. This document was not signed by Mr. Grier.

[15] On May 29, 2002, the grievor received a letter (Exhibit E-3) from Ms. Roszell regarding the grievance he had filed on December 14, 2000. She confirmed that an updated work description had been prepared and subjected to a classification review. The results of the review changed the position’s title to TSO and reclassified it to the EG-03 group and level, effective April 15, 2001.

[16] On June 11, 2002, the grievor filed the grievance that is before me (Exhibit G-2) since he disagreed with the effective date of April 15, 2001.

[17] The grievor testified that on August 7, 2002, Mr. Grier gave him a revised “Attestment of Effective Date” document (Exhibit G-7). The duties that had previously been noted in Exhibit G-8 as having been assumed in June 1999 now had October 1, 1998, as the effective date. As well, Mr. Grier attached the following appendix:

...

I cannot attest to duties carried out by Greg Black prior to 07 Dec 98, the date I joined CFHA. Greg Black did report directly to Ed Lafond as COI-10. I received no reports of unsatisfactory work habits and to my knowledge he was carrying out all duties of the COI-10 Work Description in a satisfactory manner on or about 01 Oct 98.

As manager CFHA Edmonton I did have indirect knowledge and some personal observations of COI-10 (EG-03) duties carried out by Greg Black and I was aware Ed Lafond was quite satisfied with his performance. Ed Lafond was Acting Manager, CFHA Edmonton from June to December 1998. . . .

Greg Black has indicated to me that he feels satisfied he was carrying out all functions as required in the above chart from date of employment with CFHA 15 Apr 96. As stated I have no personal knowledge of that fact due to my initial time of joining CFHA, and while PRRs are favourable for the entire employment period, there is no specific indication all duties in the this [sic] chart were in fact being performed. Previous Manager Gwen Davidson (prior to June 1998) stated that she was quite satisfied with Greg Black's performance, and her PRR reflected that fact, but on review of the chart above she cannot attest to specific duties being carried out. She advised duties on initial start-up of CFHA were varied and people were called upon, including Greg Black, to perform quite significant tasks both within and outside their stated duties, but work descriptions were somewhat unclear and duties listed in the within chart not specifically outlined.

Based on the foregoing assessment, I am satisfied Greg Black was carryout out all duties in the within chart satisfactorily by 01 October 1998. Based on that and in consideration of the retroactive dates afforded other classifications it is my judgement that a retroactive reclassification date of Oct / 01 / 1998 is justified.

Mm Day Year

I have reviewed this assessment with Greg Black and he is aware of my recommendation.

...

[18] The grievor contends that although Exhibit G-7 states that he performed one of the key activities and seven of the specific duties as of October 1, 1998, he was, in fact, performing them on his initial hiring date (April 15, 1996). For example, specific duty 14 ("Support the study and evaluation of new processes and techniques and the design, implementation, management and evaluation of projects") shows

October 1, 1998, as the effective date. To support his contention that he was performing this duty on the date that he was initially hired, the grievor referred to a letter dated December 5, 1996 (Exhibit G-6, tab 9), that he had sent to Rick Meger, of Defence Construction Canada (DCC), concerning violations by private sector contractors with respect to the asbestos abatement of a project that he had observed during site visits. The grievor stated that the employer's date of October 1, 1998, is therefore inaccurate.

[19] The grievor stated that he is certified as a specialist in asbestos abatement procedures.

[20] On December 3, 2002, the grievor received a letter (Exhibit E-4) from Ms. Roszell advising him that the effective date of his position's reclassification to the EG-03 group and level had been amended to October 1, 1998.

[21] The grievor identified Exhibit G-5 as a work description dated November 1, 1995, for his position as a housing and property inspector at the GL-COI-10 group and level. This work description was not signed by Mr. M. Evans, who was the grievor's manager when he started working at the CFHA on April 15, 1996. The grievor identified Exhibit G-4 as the Housing and Property Inspector work description that he signed on November 7, 2001. He stated that to the best of his recollection, this work description reflected the duties and key activities that he was performing as of April 15, 1996.

[22] The grievor explained that Mr. Evans was a consultant that the DND had hired to set up a separate operating agency - the CFHA - based on a model from the Government of Australia. The grievor stated that Mr. Evans had told him that his position was not classified at the proper level and that he could expect it to be reclassified to a higher level shortly after the CFHA's start-up.

[23] The grievor stated that although Exhibit G-5 had an effective date of November 1, 1995, it did not accurately reflect the duties and responsibilities that he was performing as of April 15, 1996. He stated that this work description did not mention that he liaised with the DCC or that he performed inspections for work that the DCC had done or had contracted to private sector contractors. As well, it did not mention the grievor's responsibility to monitor budgets for the CFHA.

[24] The grievor further stated that Mr. Evans had promised him in 1996 that his position would be reclassified to a higher level, and so did Albert Call, then CFHA Chief Executive Officer.

[25] The grievor explained that he did not file a grievance from 1996 to 1998 because he trusted Mr. Evans, and he believed that Mr. Evans would live up to his promise. The grievor stated that he now asks for everything in writing when he is promised something.

[26] The grievor stated that it was his belief that the DND was taking the necessary steps to reclassify his position, and this is why he did not file a grievance at the time.

[27] In cross-examination, the grievor agreed that he did not file a classification grievance when his position was reclassified from the GL-COI-10 group and level to the EG-03 group and level.

[28] He also agreed that the "Performance Review Report" (PRR) (Exhibit E-6) for the period from June 1, 1999, to May 31, 2000, indicated that he acted as a senior housing inspector at the EG-03 group and level and that he assisted with budgets, Memorandum of Understanding agreements and administering major projects at CFB Edmonton and CFB Wainwright, Alberta.

[29] The grievor stated that he is licensed to work as a carpenter in Ontario and that he has a background in contracting. He conceded that he had no written documents from Mr. Evans stating that his position at the GL-COI-10 group and level was not classified appropriately.

[30] In reply, the grievor stated that Mr. Evans, who is presently living in Australia, had advised him, as well as another housing inspector, Mario Schoeninger, that the housing and property inspector positions were not classified at the appropriate level.

[31] The grievor identified Exhibit E-7 as a PRR that he signed in 1997. He agreed that under "Career Planning and Professional Development" he had indicated "contract administration" for recommended training and development. He explained, however, that he had previously taken this course at Canada Place in Alberta.

[32] The grievor stated that the only issue before me is the effective date of his former position's reclassification.

[33] In June 1996 Edward Lafond began working as a housing and property inspector at the GL-COI-10 group and level in Edmonton, Alberta. From June 1998 to August 1999 he acted as a senior housing inspector at the EG-03 level, and at that time the grievor reported to him. In August 1999 Mr. Lafond moved to Camp Borden, Ontario, and occupied a position at the AS-05 level. In August 2000 he returned to Edmonton as a housing manager at the EG-04 level. In 2001 he accepted a position as a housing manager at CFB Esquimalt, British Columbia. Mr. Lafond is currently employed with the CFHA as the manager responsible for contracting and administration services at DND Headquarters.

[34] Mr. Lafond stated that he worked side by side with the grievor from June 1996 to August 1999 in a small office along with one other housing inspector, Mr. Shoening. He stated that “the CFHA was formed in the spring of 1996 and the organization hit the ground running.” He noted that the workload was reactionary to repairs that had to be made to Private Married Quarters (PMQs). The PMQs are military housing units on Canadian Forces bases. As military personnel were transferred from base to base, the housing and property inspectors would visit the PMQs to conduct visual inspections and to document any required repairs and maintenance. They would then relay the information to the appropriate CFHA staff who would prepare work orders for either public or private sector contractors. As well, the housing and property inspectors would respond to complaints from the occupants of the PMQs.

[35] Mr. Lafond disagreed with the grievor’s contention that his duties had not changed or evolved since he started working at the CFHA on April 15, 1996. He stated that, initially, the duties of the housing and property inspectors were very reactionary. It took approximately one year before they became involved in budget processes concerning life cycle planning as well as new procedures that focused on contracting tools.

[36] According to Mr. Lafond, Mr. Grier, who became the Housing Manager on December 7, 1998, could not complete the “attestment” document, as he had no prior knowledge that the key activities and specific duties found in Exhibit G-8 had been performed by the grievor on the date that he was initially hired. Therefore, Mr. Grier asked Mr. Lafond to determine the appropriate time frame when the grievor began performing those key activities and specific duties found in Exhibit E-8 and compare them to the documentation provided by the grievor (Exhibit G-6).

[37] Mr. Lafond explained that if he believed that the grievor had performed a key activity or a specific duty on the date that he was initially hired, he recommended that date. However, if he felt that a key activity or a specific duty had not been substantially performed at that time, then he recommended October 1, 1998, as the effective date.

[38] Mr. Lafond stated that the decision to recommend October 1, 1998, as the effective date was arbitrary, as the retroactive reclassification was based on the "Attestment of Effective Date" document (Exhibit G-6) that he was asked to review.

[39] Mr. Lafond testified that with respect to the "Key Activities" at section C of the "Attestment Effective Date" document ("Prepare business and technical plans, reports, data and other documents and information"), this duty was not being performed prior to October 1, 1998, since the housing and property inspectors did not have the time or capacity to do so.

[40] Mr. Lafond stated that based on his recollection, when he compared the duties of an EG-03 to those of a GL-COI-10, the EG-03 was required to perform more technical planning. As well, preparing business plans and doing long range planning was not possible as the CFHA was very busy and operating in a reactive manner prior to October 1, 1998. The duties of a senior housing inspector at the EG-03 level, which Mr. Lafond performed from June 1998 to August 1999, were very different. They included the responsibility for life cycle planning and long term planning, which was not required of the grievor prior to October 1, 1998.

[41] In referring to Ms. Roszell's April 15, 2002, email (Exhibit G-10), Mr. Lafond stated that the duties and responsibilities of the housing and property inspectors had evolved from routine maintenance to more emphasis on health and safety. For example, in 1996, when a housing and property inspector identified black mould, a contractor was retained to clean the mould, which was at times treated as mildew. In subsequent years, it has been recognized that black mould is toxic, and there are associated risks when removing it. Therefore, the proper equipment and the disposal methods to be used must be written into the contract. The housing and property inspectors must have that knowledge to ensure that it is reflected in the contract.

[42] Mr. Lafond stated that Mr. Evans was working for the Australian Defence Authority when the DND retained him as a contractor to establish the CFHA as a separate operating agency. At no time was Mr. Evans considered a federal public

service employee. Mr. Lafond testified that he had never heard Mr. Evans state that the GL-COI-10 positions would be reclassified. However, he did recall Mr. Evans stating that the work descriptions would be reviewed.

[43] With respect to the grievor's contention that he performed all the key activities and specific duties of an EG-03 on the date that he was initially hired, Mr. Lafond stated that the grievor's claim was unfounded. The grievor did not develop business and technical plans, prepare budgets or work on large contracts that had legal implications on major projects. Prior to October 1, 1998, the grievor only approved and assessed small projects that were considered as basic daily repairs and general maintenance.

[44] In conclusion, Mr. Lafond stated that October 1, 1998, was more than fair as the effective date for the reclassification to the EG-03 group and level, since it was from 1998 onwards that the house and property inspectors assumed the responsibility for life cycle planning and that their duties became more technical in nature. He stated that if he was unsure as to whether a key activity or a specific duty had been performed in 1999 or 2000, he gave the grievor the benefit of the doubt and indicated that the duties were assumed as of October 1, 1998. He stated that he worked on this attestation (Exhibit G-7) in 2002.

[45] In cross-examination, Mr. Lafond stated that he is a certified plumber/gas fitter, but he is not certified in asbestos abatement procedures. He agreed that although he had worked side by side with the grievor in a small office and that some of their duties may have been similar, they were not identical.

[46] Mr. Lafond stated that although Mr. Grier indicated June 1999 in Exhibit G-8 (the first "Attestment of Effective Date") as the date on which the grievor began performing "Key Activity C" and some of the specific duties of an EG-03, in his opinion, and based on his recollection, October 1, 1998, was the date that the grievor's duties changed.

[47] When asked by the grievor's representative how often the specific duties in Exhibit G-7 had to be performed, Mr. Lafond replied: "You would have to ask someone from classification." He also stated, "You may not have to do the duties every day or perhaps you may never perform them but you have to be prepared to do those duties if requested by the employer." Mr. Lafond noted that he was confident that October 1, 1998, was the appropriate date to reflect that the grievor's duties had

changed to those reflected in the EG-03 work description. Mr. Lafond concluded by stating: “I would not choose any other date than October 1, 1998, as I worked as a GL-COI-10 housing inspector and as of June 1, 1998, I worked as an EG-03 senior housing inspector and I know the work duties that were performed.”

[48] In reply, the witness acknowledged that the key activities and specific duties in Exhibit G-7 were taken from the TSO work description dated May 27, 2003 (Exhibit E-8).

III. Summary of the arguments

A. For the grievor

[49] The grievor’s representative argued that the grievor’s recollection of the key activities and specific duties that he performed as of April 15, 1996, should be preferred to that of Mr. Lafond. Mr. Lafond occupied a variety of positions over the years and moved from one location to another, and five to six years later was asked to recall what duties the grievor had performed. The grievor, however, occupied the same position and performed the same duties continuously. He is, therefore, in a far better position to accurately remember the duties that he performed.

[50] In cross-examination Mr. Lafond admitted that some of the grievor’s key activities and specific duties did not have to be performed on a daily basis. He also agreed that although some of his duties were similar to the grievor’s, he was not aware of every duty that the grievor performed or every project that he had worked on.

[51] The grievor’s representative filed, on consent, article 64 (“Pay Administration”) of the collective agreement between the Treasury Board and the Public Service Alliance of Canada (PSAC) for the Technical Services group (expiry date: June 21, 2003, Exhibit G-11). He also filed article 61 (“Pay Administration”) of the collective agreement between the Treasury Board and the PSAC for the Operational Services group (expiry date: August 4, 2003, Exhibit G-12).

[52] In conclusion, the grievor’s representative referred me to *Woodward v. Treasury Board (Fisheries and Oceans Canada)*, 2000 PSSRB 44, and to *Stagg v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-22084 (19940223).

B. For the employer

[53] Counsel for the employer argued that the onus was on the grievor to prove that the effective date of October 1, 1998, was erroneous, but he has failed to do so.

[54] This grievance concerns a classification issue. The employer made a genuine effort to pin down an effective date by seeking input from Mr. Grier and Mr. Lafond. The effective date that the EG-03 duties began was determined by the “Attestment of Effective Date” document (Exhibit G-7) to be either on the date that the grievor was initially hired or October 1, 1998. Mr. Lafond stated that although October 1, 1998, was the date he decided on, some of the duties might not have been performed until 1999 or 2000.

[55] The grievor was also given an opportunity to provide input on the work description. The evidence demonstrates that the grievor’s duties evolved after the date he was initially hired.

[56] The nub of the issue is that as a GL-COI-10 the grievor prepared work orders (technically contracts), but as an EG-03 he became responsible for the content of the contracts. There was a difference in the scope of the work that was being performed.

[57] From June 1996 to June 1998, Mr. Lafond occupied a position at the GL-COI-10 group and level and performed the same duties as the grievor. From June 1998 to August 1999, he acted as a senior housing inspector at the EG-03 group and level. Mr. Lafond testified that in his opinion, the grievor had not performed the duties of an EG-03 prior to 1998.

[58] In the alternative, the employer stated that *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (F.C.A.), would apply as the grievor waited four years before filing a grievance, and there is no evidence that he had discussed the issue with his manager.

C. Reply for the grievor

[59] The grievor’s representative replied that the classification issue has been resolved. It is the effective date that is at issue, since the scope of the grievor’s duties and responsibilities had not changed from the date that he was initially hired.

[60] In *Cairns et al. v. Treasury Board (Department of Citizenship and Immigration)*, 2006 PSLRB 130, there was a clear-cut event. In this case, there is no specific event on which the employer can rely.

[61] *Coallier* is not applicable since in this case the grievor was asked to be patient regarding the ongoing classification process (Exhibit G-9), and as a result a considerable amount of time elapsed.

[62] The grievor testified that Mr. Evans had informed him that his position at the GL-COI-10 level was not classified at the appropriate level and that he could expect it to be reclassified to a higher level shortly after the start-up of the CFHA.

IV. Reasons

[63] On October 31, 2000, Mr. Grier informed the grievor that his position as a housing and property inspector, at the GL-COI-10 group and level, had been the subject of a classification review and that the results were that the position would remain at the same group and level.

[64] On December 14, 2000, the grievor filed a grievance (Exhibit G-1) contesting the content and level of his current work description (Exhibit G-5) dated November 1995.

[65] On May 29, 2002, the grievor received a letter from Ms. Roszell (Exhibit E-3) about his grievance that informed him that an updated work description had been prepared. She noted that after a classification review his position was reclassified to the EG-03 group and level effective April 15, 2001, and was given a new title of TSO. The work description reflected the evolution of the work, which had increased in complexity, and the requirement for enhanced technical knowledge and skills.

[66] On June 11, 2002, the grievor filed the instant grievance contesting the effective date of April 15, 2001. He contends that he was performing those duties on the date that he was initially hired (April 15, 1996), and therefore this should be the appropriate effective date.

[67] The grievor introduced Exhibit G-8 (the "Attestment of Effective Date") document in which Mr. Grier stated, "I cannot attest to duties carried out by Greg Black prior to 07 Dec 98, the date I joined CFHA. . . ." In that document, Mr. Grier indicated

that key activities at section C and specific duties 1, 14, 16, 18, 19, 20, 22 and 23 had been assumed as of June 1999.

[68] Mr. Lafond testified that Mr. Grier asked him to review Exhibit G-6 since he had worked side by side with the grievor as a GL-COI-10 from June 1996 to June 1998. From June 1998 to August 1999, the grievor reported directly to Mr. Lafond when he acted as a senior housing inspector.

[69] Further to instructions he received from Mr. Grier, Mr. Lafond compared the key activities and specific duties found in the TSO work description (Exhibit E-8) that were incorporated into the "Attestment of Effective Date" document (Exhibit G-7) with the grievor's documentation (Exhibit G-6). Using those documents, as well as relying on his personal knowledge and recollection, he decided that the key activities in section C and specific duties 1, 14, 16, 18, 19, 20, 22 and 23 were performed by the grievor as of October 1, 1998. He indicated that date on the "Attestment of Effective Date" document that Mr. Grier signed on August 7, 2002 (Exhibit G-7).

[70] Mr. Lafond also testified that the grievor's supporting documents (Exhibit G-6), attesting that he had performed all of the key activities and specific duties, did not apply to major work projects such as life cycle and technical and budget planning, since those duties only evolved after the initial start-up of the CFHA.

[71] In his testimony, Mr. Lafond stated, "It took approximately one year after the initial start up of the CFHA (April 1, 1996) for the housing inspectors to be involved in budget processes concerning life cycle planning as well as new procedures that focused on contracting tools." As well, Mr. Lafond's evidence was not to the effect that the grievor was not responsible for those duties. Rather, it was that they did not perform those duties in the first year of the organization's start-up. This contradicts the effective date of October 1, 1998, that he recommended in Exhibit G-7. As such, why would Mr. Lafond not have chosen April 1, 1997, as the effective date?

[72] On December 3, 2002, Ms. Roszell informed the grievor (Exhibit E-4) that the effective date of his position's reclassification had been changed from April 15, 2001, to October 1, 1998.

[73] I have thoroughly reviewed the grievor's supporting documents (Exhibit G-6), and specifically the key activities and specific duties noted by Mr. Lafond as having been assumed by the grievor on October 1, 1998. These documents and the grievor's testimony have convinced me that the grievor performed the key activities and specific duties found in the TSO work description since he began with the CFHA in April of 1996.

[74] In *Cairns et al.*, the employer was able to point to a significant and discrete change in the grievor's duties and responsibilities to correspond to the appropriate effective date. That is not the case here. Therefore, the employer was unable to refute, in this manner, the grievor's allegation that the duties and responsibilities assigned to him had remained unchanged since his initial hiring date.

[75] The employer's decision to alter, on a number of occasions, the effective date for the grievor's entitlement to retroactive compensation is very disconcerting. Ms. Roszell initially stated that it was effective April 15, 2001. Mr. Grier recommended June 1999. Mr. Lafond, however, recommended October 1, 1998, but then gave contradictory evidence during his testimony that it was on April 1, 1997, a year after the start up of the CFHA, that the housing and property inspectors assumed the responsibility for budgets, life cycle planning, etc. The employer's uncertainty as to the effective date that the grievor assumed all the key activities and specific duties of the TSO work description gives one the perception that the employer's decisions were somewhat based on "a pin the tail on an effective date" scenario.

[76] The grievor testified that he was told by Mr. Evans that his position was not classified at the proper level and that he could expect it to be reclassified to a higher level. No evidence was adduced that Mr. Evans made such a statement or any written correspondence that the grievor would be reclassified to an EG-03 position. Therefore, I am bound by *Coallier* and limit the monetary redress to 25 days prior to the filing of the instant grievance. The grievance was filed on June 11, 2002, and the grievor was compensated as of October 1, 1998. In view of the above, the request for redress must be dismissed.

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

(The Order appears on the next page)

V. Order

[78] This grievance is allowed in part. The grievance is allowed on its merits to the extent that the effective date of the grievor's appointment to the EG-03 group and level will be changed to April 15, 1996, but the request for compensation is dismissed.

July 17, 2007.

**D.R. Quigley,
adjudicator**