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*Public Service Staff
Relations Act*

Before an adjudicator

BETWEEN

GEORGES LAPLANTE, CAROL GAUVIN AND JACQUES AUDETTE

Grievors

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as

Laplane et al. v. Canadian Food Inspection Agency

In the matter of grievances referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act, R.S.C. 1985, c. P-35

REASONS FOR DECISION

Before: [Jean-Pierre Tessier, grievance adjudicator](#)

For the Grievors: [Frédéric Durso, Professional Institute of the Public Service of
Canada](#)

For the Employer: [Stéphane Hould, counsel](#)

Heard at Québec, Quebec,
May 16 to 18, 2006.
(P.S.L.R.B. Translation)

Grievances referred to adjudication

[1] Georges Laplante, Carol Gauvin and Jacques Audette (“the grievors”) are employed by the Canadian Food Inspection Agency (“the Agency”). In fall 2001 they were informed that their positions were being reclassified to the AG-03 group and level retroactively to April 1, 1999. In Mr. Gauvin’s case, the retroactivity dated back to May 22, 2001.

[2] The grievors contested the retroactivity date of the reclassification of their positions and argued that it should be, at the latest, April 1, 1997, the date on which the Agency was created. They filed grievances to that effect. The grievances were referred to adjudication in December 2004.

[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*, these references to adjudication must be dealt with in accordance with the provisions of the former *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35.

Summary of the evidence

[4] In its replies to the grievances, the Agency raised the matter of timeliness in the filing of the grievances, since the grievances are claiming retroactivity back to 1997. However, the Agency abandoned this point at the hearing.

[5] The Agency argues that the issue is the retroactivity date of the reclassification of the grievors’ positions. It maintains that the wording of Mr. Gauvin’s grievance contests the reclassification of his position and that the grievance adjudicator has no jurisdiction in this matter.

[6] Mr. Laplante indicated that he requested a work description following the Agency’s creation in 1997. He maintains that he did not obtain a work description in 1997 or in 1998, but that the Agency subsequently indicated to him that the matter was to be reviewed. The Agency did in fact ask him and his co-workers to rewrite their work descriptions in 2000.

[7] The new work descriptions (Exhibit F-5) were submitted for reclassification in 2001. The grievors’ positions were reclassified to the AG-03 group and level in fall 2001 (Exhibit F-6).

[8] Mr. Laplante indicated that he had been informed of the reclassification of his position in September 2001. However, the notice (Exhibit F-6) did not indicate the date on which this reclassification was to come into effect. On October 22, 2001, Mr. Laplante was informed that the reclassification of his position was retroactive to April 1, 1999 (Exhibit F-7).

[9] Mr. Laplante maintains that the work premises were inspected and the grievors were asked to describe their duties and responsibilities and that a report (Exhibit F-8) was filed.

[10] With regard to the claim of retroactivity, Mr. Laplante asserts that he has been performing the same duties since 1997 without interruption. He argues that the work was essentially the same in previous years, from 1992 to 1997, other than the fact that he was working for Agriculture Canada at that time. It was for that reason that he limited his grievance to 1997, the year in which the agency was created. Mr. Laplante stated that he had received his previous work description in 1992.

[11] Mr. Audette, a sector agronomist, corroborated Mr. Laplante's testimony. He said he had participated in writing his work description in 2000.

[12] Mr. Gauvin maintains that he did not receive a work description between 1992 and 1999. He stated that he had learned in 2001 that positions were being reclassified to the AG-03 group and level. It was for that reason that he filed a grievance in November 2001.

[13] It is true that Mr. Gauvin's position was reclassified to the AG-03 group and level in November 2001 (Exhibit F-23). However, he said he had performed the same duties since 1994. He noted that he had previously contested the classification of his position when he was working for Agriculture Canada.

[14] Ange-Aimée Deschênes is director of the regional office in the St-Hyacinthe, Quebec, operations centre. She stated that in 1997-1998 she was Director, Operations, for the Agency, which had six sections at that time. She was appointed to her current position in 1998. At that time the Agency had only four sections for Quebec.

[15] Ms. Deschênes stated that she was not in charge of the animals section in 1997. In 1998, she was given additional responsibilities. Things did not fall into place right away. In 1999, the organizational structure was changed and the people responsible

for services for the programs associated with the Montreal office started reporting to Ottawa.

[16] Ms. Deschênes admitted that the Agency began reclassifying the inspectors' positions in 1997. However, in this case, the Agency was addressing an issue that had been the subject of discussion for a number of years.

[17] Yvon Bertrand is executive director of the Quebec operations centre. He explained that in 1998-1999 the 18 positions associated with program services were placed under the responsibility of the Program Services Division, based in Ottawa, although the incumbents remained on duty in Montreal.

[18] Because of this, Mr. Bertrand wanted to review the grievors' work descriptions for his responsibility because, in his opinion, the administrative reallocation of the 18 positions changed the way the Quebec operations centre operated.

[19] Mr. Bertrand maintained that the Agency was expanding rapidly after April 1, 1999, and that it was necessary to add support for the Plant Production Division. The Agency hired staff in agronomy and added a sector agronomist position that was filled by Judith Gagnon in 2000 (Exhibit F-4).

[20] According to Mr. Bertrand, the various organization charts adduced in evidence (Exhibits E-1 and E-3) reflect the changes made to the Agency as of April 1, 1999. He agreed that everything was not in place in 1999 and that new duties were gradually added to the existing positions over the years. Staff was hired in 2000, Ms. Gagnon being among them.

[21] Mr. Bertrand explained that the Agency attached greater importance to biotechnology and made additions to the Animal Products Division because of the avian flu problem.

[22] Mr. Bertrand agreed that the work changed gradually starting in 2000 rather than following the Agency's restructuring on April 1, 1999.

Summary of the arguments

[23] The grievors argue that they have performed the same duties since 1997 and claim they are entitled to acting pay as of that time. They argue that their duties did not change significantly in 1999, contrary to the employer's assertions.

[24] The grievors requested new work descriptions in 1997, but it was not until 2000 that the Agency agreed to have them rewritten and evaluated by the classification committee.

[25] The grievors indicated that they were limiting their claim to 1997, the year in which the Agency was created, but that they had previously performed the same duties while they were working for Agriculture Canada.

[26] The grievors are not seeking a reclassification of their positions but acting pay at the AG-03 group and level as of 1997.

[27] Lastly, the grievors note that the Agency indicated in its grievance replies that it clearly understood that it was on the basis of the additional responsibilities that were being exercised that Mr. Gauvin was asking to be paid at the AG-03 group and level.

[28] The Agency, for its part, points out that a grievance adjudicator has no jurisdiction on matters of classification. It notes that in their grievances, the grievors have not argued that they held acting positions or performed additional duties. They are claiming that their positions should be reclassified retroactively.

[29] At the same time, the Agency recognizes that the grievors' responsibilities increased gradually starting in 1999 with the reorganization of services. The grievors participated in the updating of their work descriptions in 2000. It was those work descriptions that were submitted to the classification committee for evaluation. This was followed by a reclassification of their positions to the AG-03 group and level, and they were notified of the decision in 2001.

[30] The Agency argues that applying this reclassification as of 1999 would mean that the grievors would be paid from the time when, in its opinion, they performed additional duties, which is in keeping with their claim that they performed additional duties on an interim basis before the 2001 decision regarding the reclassification of their positions.

[31] The Agency maintains that, with respect to other positions reclassified in 2000 (E-06 group and level), it granted retroactivity back to 1997 because the incumbents of those positions had been performing additional duties since that time. According to the Agency, the employees in question had been asking to have their positions reclassified for a number of years while they were working for Agriculture Canada and

made the same request when they were transferred to the Agency in 1997. Furthermore, according to the Agency, this was a matter of rectifying an inequity that had persisted for a number of years.

Reasons

[32] Although the grievors are contesting in their grievances the decision regarding the effective date of their position reclassifications, they are actually seeking acting pay at the AG-03 group and level retroactively to April 1, 1997. The issue is thus one of remuneration. They claim they have performed duties at the AG-03 group and level for a number of years, at least since they joined the Agency in 1997. A grievance adjudicator has jurisdiction to render a decision with regard to acting pay in connection with the performance of duties at a higher level.

[33] In *Stagg v. Canada (Treasury Board)*, [1993] F.C.J. No. 1393 (Trial Division) (QL), the Federal Court Trial Division ruled that Ms. Stagg was entitled to acting pay for the time when she performed duties of a position at a higher level. The issue was one of remuneration and not classification. With regard to the employer's assertion to the contrary, the Court held as follows:

...

... The employer's posture herein leads only to the nefarious notion that after imposing more onerous duties upon employees and according the commensurate upgrade of classification of position - proper and exclusive employer's functions, the employer can then, by dragging its feet on remuneration, obtain the employees' extra services free for a time by just delaying the commensurate raise in remuneration....

...

[34] In *Jones v. Canada Customs and Revenue Agency*, 2001 PSSRB 69, the grievance adjudicator determined that Mr. Jones was entitled to acting pay because he was performing duties at a higher level. His reasons read in part as follows:

...

[37] On the other hand, I cannot accept the argument of the grievor's representative with respect to the issue that the duties performed by Mr. Jones stayed the same for all the

period from 1992 to 1999. The uncontradicted evidence of the employer shows that the duties to adopt new policies were removed from Mr. Jones' responsibility in 1994 and this responsibility relating to new policy was given back to Mr. Jones in June 1998. The reorganization of the sections and of their responsibilities was put into effect in June 1998 and was justified by two factors: (1) the increasing complexity of the GST applications (after March 1997) and (2) the transfer of the new policy duties. In June 1998, a new position was created and was classified at the AU-05 group and level.

[38] For these reasons, I conclude that Mr. Jones is entitled to be paid at the AU-05 group and level since June 1, 1998 when he assumed the duties of the new position description, including the new policy responsibilities. Accordingly, this grievance is allowed in part.

...

[35] In the instant case, the grievors assert that they have been performing essentially the same duties for a number of years. They maintain that their duties did not change significantly with the new work descriptions in 2001. However, the evidence establishes that there was a restructuring in 1999 and that the grievors were assigned new duties. In 2001, as a result of this restructuring, the work descriptions were updated and the grievors' positions were reclassified to the AG-03 group and level. Absent evidence to the contrary, there is nothing that would establish that the 2001 reclassifications did not take into account the April 1, 1999, restructuring and the addition of responsibilities.

[36] The Agency argues that the addition of those responsibilities did not immediately have a significant impact on the grievors' workload and that everything took place gradually over the subsequent months and years. The grievors do not deny that there were changes as a result of the April 1, 1999, restructuring but maintain that their responsibilities remained essentially the same.

[37] The determination of the date as of which an employee performed additional duties at a higher level must be based on an assessment of the facts. The onus is on the grievor to establish as of what point he performed those duties.

[38] In this case, the grievors have not indicated any date as of which they allegedly performed these additional duties. They do in fact indicate that in 1997 they asked for

new work descriptions, but nothing more. After the April 1, 1999, restructuring, the Agency asked the grievors to rewrite their work descriptions. The Agency revised the new work descriptions, and a classification decision was rendered in 2001.

[39] There could be a great deal of discussion concerning the moment when the grievors were assigned the additional duties and responsibilities. The Agency could have claimed that they had in fact been assigned the additional duties and responsibilities in 2000 or 2001. However, it acknowledged that, with regard to Mr. Laplante and Mr. Audette, those duties had been assigned as of the April 1, 1999, restructuring.

[40] The evidence established that the duties and responsibilities were added to the grievors' positions as of April 1, 1999, and that the Agency agreed that those duties warranted a reclassification to the AG-03 group and level. Mr. Audette and Mr. Laplante were thus paid accordingly as of April 1, 1999.

[41] The Agency paid Mr. Gauvin at the AG-03 group and level as of May 22, 2001 only. I cannot accept the Agency's position with respect to Mr. Gauvin, because it admitted that the additional duties were a result of the April 1, 1999, restructuring. The Agency did not provide any specific information with respect to the dates on which Mr. Gauvin was assigned the additional duties and responsibilities. Accordingly, the Agency cannot treat Mr. Gauvin any differently from Mr. Laplante and Mr. Audette. It must grant him the same treatment and pay him acting pay at the AG-03 group and level retroactively to April 1, 1999.

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

(The Order appears on the next page)

Order

[43] The grievances of Mr. Laplante and Mr. Audette are dismissed.

[44] Mr. Gauvin's grievance is allowed in part. I hereby direct the employer to pay him additional remuneration for the period from April 1, 1999, to May 21, 2001, inclusive, equivalent to the difference between the salary he was paid and that which he would have received if he had been paid at the AG-03 group and level, minus any applicable deductions. I further direct the employer to grant Mr. Gauvin all of the advantages and benefits arising from this additional remuneration.

January 16, 2007.

P.S.L.R.B. Translation

**Jean-Pierre Tessier,
adjudicator**