Date: 20081027

File: 166-02-36525

Citation: 2008 PSLRB 87

Public Service Staff Relations Act

Before an adjudicator

BETWEEN

HILLARIE C. ZIMMERMANN

Grievor

and

TREASURY BOARD
(Department of Indian Affairs and Northern Development)

Employer

Indexed as
Zimmermann v. Treasury Board (Department of Indian Affairs and Northern Development)

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

REASONS FOR DECISION

Before: Dan Butler, adjudicator

For the Grievor: Evan Heidinger, Professional Institute of the Public Service of Canada

For the Employer: Martin Desmeules, counsel

Heard at Whitehorse, Yukon,
September 16, 2008.

I. Grievance referred to adjudication

[1] Hillarie C. Zimmermann ("the grievor") filed a grievance on February 18, 2005, in which she alleged that the Department of Indian Affairs and Northern Development, also known as Indian and Northern Affairs Canada (INAC), violated clauses 17.04(a)(iii) and 17.07(a)(iii) of the collective agreement for the Audit, Commerce and Purchasing (AV) Group ("the collective agreement") between the Treasury Board ("the employer") and the Professional Institute of the Public Service of Canada ("the bargaining agent").

[2] The grievor stated the details of her grievance and the corrective action sought as follows:

> *I have been advised by my current employer, INAC, that I will not be able to discharge my obligation to work for a period of time equivalent to the periods I was in receipt of a maternity allowance and a parental allowance through working for my new employer, the Parks Canada Agency. This advice, and the assignment of any liability to me upon my transfer to Parks Canada, is contrary to the provisions of my Collective Agreement, specifically Clause 17.04(a)(iii) and 17-07(a)(iii).*
>
> [corrective action]
>
> *That I be allowed to fulfill my obligation by working at the Parks Canada Agency; that any recovery of monies by INAC allegedly owing be reversed and the funds restored to me; and that I be made whole in every way.*

[3] The two clauses of the collective agreement identified by the grievor read as follows:

> . . .
>
> ***17.04 Maternity Allowance***
>
> *(a) An employee who has been granted maternity leave without pay shall be paid a maternity allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in paragraphs (c) to (i), provided that she:*
>
> . . .
>
> *(iii) has signed an agreement with the Employer stating that:*

(A) she will return to work on the expiry date of her maternity leave without pay unless the return to work date is modified by the approval of another form of leave;

(B) following her return to work, as described in section (A), she will work for a period equal to the period she was in receipt of the maternity allowance;

(C) should she fail to return to work in accordance with section (A), or should she return to work but fail to work for the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the Public Service Superannuation Act, *she will be indebted to the Employer for an amount determined as follows:*

$$\text{(allowance received)} \times \frac{\text{(remaining period to be worked following her return to work)}}{\text{[total period to be worked as specified in (B)]}}$$

however, an employee whose specified period of employment expired and who is rehired by the same department within a period of five (5) days or less is not indebted for the amount if her new period of employment is sufficient to meet the obligations specified in section (B).

. . .

17.07 Parental Allowance

(a) An employee who has been granted parental leave without pay, shall be paid a parental allowance in accordance with the terms of the Supplemental Unemployment Benefit (SUB) Plan described in paragraphs (c) to (i), providing he or she:

. . .

(iii) has signed an agreement with the Employer stating that:

(A) the employee will return to work on the expiry date of his parental leave without pay, unless the

> *return to work date is modified by the approval of another form of leave;*
>
> *(B) Following his return to work, as described in section (A), the employee will work for a period equal to the period the employee was in receipt of the parental allowance, in addition to the period of time referred to in section 17.04(a)(iii)(B), if applicable;*
>
> *(C) should he fail to return to work in accordance with section (A) or should he return to work but fail to work the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the* Public Service Superannuation Act*, he will be indebted to the Employer for an amount determined as follows:*
>
> $$\text{(allowance received)} \times \frac{\text{(remaining period to be worked following his/her return to work)}}{\text{[total period to be worked as specified in (B)]}}$$
>
> *however, an employee whose specified period of employment expired and who is rehired by the same department within a period of five (5) days or less is not indebted for the amount if his new period of employment is sufficient to meet the obligations specified in section (B).*
>
> . . .

[4] After a final-level decision dated July 26, 2005, in which the employer denied her grievance, the grievor referred the matter to adjudication on August 24, 2005, with the required support of her bargaining agent.

[5] 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 ("the former *Act*").

[6] Two previous attempts by the Registry of the Public Service Labour Relations Board to schedule this matter for hearing were unsuccessful due to the unavailability of the grievor or a representative.

II. Summary of the evidence

[7] The grievor was the sole witness.

[8] The grievor began working in the public service in 1998 as an employee of Parks Canada in Inuvik, Northwest Territories. In 2001, she took maternity leave and parental leave as provided for under the collective agreement that applied to her position at that time (Exhibit G-2). Before commencing her leave, she signed a Maternity Leave Agreement and Undertaking (Exhibit G-3). As part of that agreement, she committed to return to work for a period equal to her time on leave as required by the collective agreement at Parks Canada. During the leave, she received maternity and parental leave allowances.

[9] The grievor did not return to work at Parks Canada. During her leave, she and her husband decided to move their family to Whitehorse, Yukon, where her husband had been offered employment. At the end of her maternity and parental leave, Parks Canada granted the grievor's request for spousal relocation leave.

[10] In Whitehorse, the grievor competed for, and won, a term position with INAC that was classified as a CO-02. She communicated with Parks Canada to explain the situation and to inquire whether she could fulfill her return-to-work obligation by working at INAC. Parks Canada agreed. Parks Canada staff arranged for the transfer of her leave and pension files to INAC (Exhibit G-4). The grievor's term employment with INAC began in early 2003.

[11] The grievor became pregnant for a second time. She applied for, and was granted, maternity and parental leave under the collective agreement (Exhibit G-1). She signed two agreements with INAC — a Maternity Leave Agreement and Undertaking and a Parental Leave Agreement and Undertaking (Exhibit G-5). As before, the agreements committed her to return to work for a period equal to the combined period of maternity and parental leave. During the leave, she received maternity and parental leave allowances.

[12] Shortly before the end of her one-year leave, Parks Canada contacted the grievor with a job offer. She accepted the job offer because Parks Canada was prepared to accommodate her interest in working part-time to allow her more opportunity to care for her two young children. The position offered was indeterminate, also an important consideration for the grievor.

[13] The grievor returned to her position at INAC for two weeks before returning to work for Parks Canada. Her resignation from INAC took effect on February 19, 2005. She spoke with various INAC officials to seek clarification about how the return-to-work obligation would be administered in the circumstances. INAC officials told her that Parks Canada was a separate employer. The grievor's obligation to return to work was to INAC. Under the collective agreement that governed her CO-02 position at INAC, failure to fulfill the return-to-work obligation with INAC triggered a requirement to reimburse the department for a pro-rated portion of the maternity and parental allowances paid to her. Taking up work at Parks Canada did not relieve the grievor of that liability.

[14] The grievor indicated to INAC officials that she disagreed with their interpretation of the collective agreement. She asked why, in contrast, she had been allowed to use her time at INAC to discharge the return-to-work obligation to Parks Canada arising from her first maternity and parental leave. The grievor testified that INAC did not provide an answer.

[15] INAC subsequently sent the grievor two letters outlining the maternity and parental allowance amounts that she was required to repay and the other arrangements that applied to her transfer to Parks Canada (Exhibits G-6 and G-8). Allowance repayment deductions began, but not until July 2007 (Exhibits G-9 and G-10). The repayment deductions were still in effect as of the date of the hearing and will remain so for the next five or six years.

[16] In cross-examination, the grievor outlined that her original term position with INAC was for a period of one year (Exhibit E-1) and that it was later extended for a second year through to March 31, 2005 (Exhibit E-2). The grievor confirmed that she had discussed the implications of her maternity and parental leave with INAC officials before taking leave. She was concerned at the time about the length of her term and whether she would be able to fulfill the return-to-work requirement. While the grievor could not recall the details of those conversations, she agreed with the employer that the lack of a guarantee about her term at that time carried a risk for her.

[17] The grievor testified that, when she signed the two leave agreements with INAC (Exhibit G-5), she understood that she would have to repay the maternity and parental "top-ups" if she did not go back to work for the "federal government." Asked about the meaning of the term "Employer" in the INAC leave agreements, the grievor said that she thought at the time that it meant the federal government, based on her first experience taking maternity and parental leave with Parks Canada. Shown the leave agreement that she had signed with Parks Canada (Exhibit G-3), she acknowledged that there was a difference in wording compared to the INAC leave agreements. The former agreement allowed her to return to work for the ". . . Parks Canada Agency, any portion of the Federal public service for which the Treasury Board is the employer or another separate employer . . . ." The INAC leave agreements did not contain the same reference. She stated that the wording of the two collective agreements that she had worked under (Exhibits G-1 and G-2) were nevertheless basically identical and that it was not obvious to her that the reference to "Employer" in the INAC leave agreements did not mean the federal government.

[18] Asked by the employer for further details about her discussions with INAC officials before taking her second maternity and parental leave, the grievor indicated that she did not have a clear recollection of whom she had talked to or of the subjects discussed. With respect to her discussions with INAC officials in February 2005 about her intention to accept a position at Parks Canada, she confirmed that they did tell her that she would not fulfill her return-to-work obligation if she went to work for Parks Canada. While agreeing that they told her that she would be required to repay the "top-up," she stated again that she disagreed with their interpretation of the collective agreement. She confirmed that she understood the risk she faced if she left INAC, but that she had already decided to accept the position at Parks Canada.

III. Summary of the arguments

A. For the grievor

[19] According to the grievor, the underlying issue in this case is the inconsistency in the employer's application of the collective agreement.

[20] At all material times, the grievor was an employee of the federal public service. When she took maternity and parental leave for the first time and received maternity and parental allowances, Parks Canada agreed that she could fulfill her return-to-work obligation in the position that she accepted at INAC. When she took maternity and

parental leave for the second time, INAC did not follow the same interpretation. It instead required that the grievor repay the maternity and parental allowances when she decided to resign to take a position back at Parks Canada.

[21] The grievor conceded that the AV collective agreement defines the "Employer" as the Treasury Board and that clauses 17.04(a)(iii) and 17.07(a)(iii) — the maternity and parental leave allowance provisions — refer to the "Employer." Nonetheless, in her view, those provisions do not state where the grievor should return to work. While the absence of any specific indication does not mean that the grievor could return to work anywhere, it was clear in the grievor's mind that she could fulfill that obligation by returning to federal government employment as had been the case following her first maternity and parental leave. She submitted that there is no dispute that the Treasury Board and the separate employers all form part of the same public service.

[22] The employer in this case has been "consistently inconsistent." While it has taken action to recover the maternity and parental allowances paid to the grievor during her second leave period, at the same time it facilitated the transfer from INAC to Parks Canada of a variety of leave, pension and insurance entitlements. It allowed those transfers because the Treasury Board and Parks Canada consider themselves to be parts of the public service and wish to promote employee mobility within the public service. INAC also transferred the grievor's accumulated sick leave credits to Parks Canada even though there is no reference to that possibility in the sick leave article of the AV collective agreement.

[23] The grievor argued that employees' pay all comes from the same place. Their pay stubs commonly refer to the "Government of Canada," suggesting that there is only one employer. Nonetheless, employees on maternity and parental leave are treated one way at Parks Canada and another way at INAC.

[24] Once the grievor was at Parks Canada, there was a delay of 26 months before the allowance repayment deductions began. By that delay, the employer effectively confirmed that recovery was not appropriate. It condoned non-recovery. The adjudicator should therefore find that the employer was estopped from commencing repayment deductions in July 2007.

[25] In closing, the grievor argued that the grievance has merit and that the adjudicator has reason to intervene to address the employer's inconsistent treatment

of the grievor. The grievor asked that I grant the corrective action sought in her grievance.

B. <u>For the employer</u>

[26] The employer submitted that the relevant facts of this case are not in dispute. The grievor worked as a term employee at INAC. Her term employment was extended to March 31, 2005. During that extension, the grievor requested and took maternity and parental leave. At the time she submitted her request, she understood that there was a risk that she would not be able to fulfill her return-to-work obligation given the length of her term appointment. There is no evidence that the employer misled the grievor about what was expected if she could not fulfill that obligation. The grievor signed the two leave agreements (Exhibit G-5) in which that obligation was clearly stated.

[27] When the grievor notified the employer in February 2005 that she had accepted an offer of employment with Parks Canada, the employer clearly indicated that she would have to repay her maternity and parental leave allowances if she left. Once again, there is no evidence that the employer misled her. The grievor's mind was nonetheless made up. She testified that she interpreted the collective agreement differently and acted based on her own interpretation, knowing the risk that she faced.

[28] The grievor's interpretation of the collective agreement was wrong. Clauses 17.04(a)(iii) and 17.07(a)(iii) require an employee to return to work with the employer for a period equal to the duration of the leave taken. The collective agreement indisputably defines the "Employer" as the Treasury Board. It requires repayment of maternity and parental allowances in the event that an employee does not fulfill the return-to-work obligation owed to that employer. There is, according to the employer, no ambiguity in the collective agreement. It was properly interpreted and applied by INAC. None of the exceptions to the requirement to repay listed in clauses 17.04(a)(iii) and 17.07(a)(iii) apply to the grievor.

[29] With respect to the grievor's allegation that the collective agreement does not specify where an employee must return to work in order to satisfy the return-to-work obligation, the employer argued that the references to "same department" in clauses 17.04(a)(iii)(C) and 17.07(a)(iii)(C) refute the grievor's allegation.

[30] The employer maintained that the grievor may not rely on an interpretation of the collective agreement that applied to her when she first worked for Parks Canada

(Exhibit G-1), nor on the provisions of the leave agreement that she signed with Parks Canada (Exhibit G-3), to argue that INAC is bound to apply the return-to-work requirement and to recover maternity and parental allowances in the same way. The grievor also may not rely on the fact that INAC transferred other leave, pension and insurance entitlements, including sick leave credits, to Parks Canada on her return there as proof that she can fulfill her return-to-work obligation by working at Parks Canada. The requirements stated in clauses 17.04(a)(iii) and 17.07(a)(iii) are clear to the contrary.

[31] The monies owed by the grievor are a debt to the Crown. The fact that recovery payments did not commence until 26 months after the grievor's return to Parks Canada, for whatever reason, is not relevant. The grievor's estoppel argument might have been successful had INAC made representations to her that it would not act to recover the monies that she owed and had such representations affected her decision to leave INAC to work for Parks Canada. None of that was the case. INAC made it clear that it would recover the allowances paid to the grievor. The grievor left INAC nonetheless. There is thus no basis for an estoppel argument.

[32] In summary, the employer maintained that the grievor resigned her term employment at INAC before fulfilling her obligation to the employer to return to work for a period equal to the period of maternity and parental leave that she had taken. Under the terms of the collective agreement, she is obliged to repay the monies that the employer paid her. The grievance should be dismissed.

[33] The employer referred me to *Guertin v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-18256 (19890710), as support for its position.

C. <u>Grievor's rebuttal</u>

[34] In rebuttal, the grievor continued to contend that an argument of estoppel applies, stating that the simple fact that the employer neglected to recover monies for a period of 26 months represents condonation of non-repayment.

[35] According to the grievor, it is interesting to note that the employer referred to a debt owed to the Crown in its argument. Ultimately, that reference recognizes that the Crown is ultimately the employer, and that the grievor can fulfill her return-to-work obligation by working for Parks Canada.

[36] The grievor contested the relevance of *Guertin*, arguing that that decision should be distinguished because, unlike the grievor in *Guertin*, she did not resign, she moved to another portion of the public service.

IV. Reasons

[37] There is no argument in the case before me that the employer acted arbitrarily or in bad faith, or that it discriminated against the grievor, when it required her to repay the maternity and parental allowances that she received because she did not fulfill her obligation to the employer to return to work for a period equal to the duration of her maternity and parental leave. The only issue that I must decide, therefore, is whether the grievor has met her onus to demonstrate that the employer incorrectly interpreted and applied the terms of the collective agreement when it imposed the repayment requirement on the grievor.

[38] Clause 2.01(j) of the collective agreement defines "Employer" as follows:

> ***"Employer"*** *means her Majesty in right of Canada as represented by the Treasury Board, and includes any person authorized to exercise the authority of the Treasury Board;*

[39] Clauses 17.04(a)(iii) and 17.07(a)(iii) of the collective agreement required that the grievor sign agreements with "the Employer" regarding the maternity and parental leave without pay that she was granted and the conditions under which she would receive maternity and parental allowances during those periods of leave. The evidence is undisputed that the grievor signed the required agreements (Exhibit G-5). Those agreements contain the following provisions:

> . . .
>
> *(Maternity Leave Agreement and Undertaking)*
>
> . . .
>
> *2. In conformity to clause 17.04(a)(iii)(A) and (B), I undertake to return to work for the Employer on* ***June 7, 2004*** *unless this date is modified with the Employer's consent. Following my return from maternity leave without pay, I will work for a period equal to the period I was in receipt of the maternity allowance.*
>
> . . .

(Parental Leave Agreement and Undertaking)

. . .

2. In conformity to clause 17.07(a)(iii)(A) and (B), I undertake to return to work for the Employer on ***February 6, 2005*** *unless this date is modified with the Employer's consent. Following my return from parental leave without pay, I will work for a period equal to the period I was in receipt of the parental allowance. This period is in addition to the period required for the maternity allowance, if applicable.*

. . .

[40] The undertakings expressed in the paragraphs cited above are consistent with the requirements stated in clauses 17.04(a)(iii)(A) and (B) and 17.07(a)(iii)(A) and (B) respectively of the collective agreement, reproduced at paragraph 3.

[41] The undisputed evidence is that the grievor did not return to work for a period equal to the duration of her maternity and parental leave without pay. She voluntarily resigned her position at INAC to accept a job offer at Parks Canada for reasons sufficient to her.

[42] The collective agreement clearly addresses what happens in the situation where an employee does not fulfill the return-to-work obligation, as follows:

. . .

17.04 Maternity Allowance

. . .

(C) should she fail to return to work in accordance with section (A), or should she return to work but fail to work for the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the Public Service Superannuation Act, *she will be indebted to the Employer for an amount determined as follows:*

(allowance received) *X* *(remaining period to be worked following her return to work)*

[total period to be worked as specified in (B)]

however, an employee whose specified period of employment expired and who is rehired by the same department within a period of five (5) days or less is not indebted for the amount if her new period of employment is sufficient to meet the obligations specified in section (B).

. . .

17.07 Parental Allowance

(C) should he fail to return to work in accordance with section (A) or should he return to work but fail to work the total period specified in section (B), for reasons other than death, lay-off, early termination due to lack of work or discontinuance of a function of a specified period of employment that would have been sufficient to meet the obligations specified in section (B), or having become disabled as defined in the Public Service Superannuation Act, *he will be indebted to the Employer for an amount determined as follows:*

(allowance received) *X* *(remaining period to be worked following his/her return to work)*

[total period to be worked as specified in (B)]

however, an employee whose specified period of employment expired and who is rehired by the same department within a period of five (5) days or less is not indebted for the amount if his new period of employment is sufficient to meet the obligations specified in section (B).

. . .

[43] The two leave agreements signed by the grievor (Exhibit G-5) explicitly recognize the application of the foregoing repayment requirements, as follows:

. . .

Maternity Leave Agreement and Undertaking

. . .

4. I recognize the implications of clause 17.04(a)(iii)(C) of the collective agreement if I were not to return to work as stipulated above.

. . .

Parental Leave Agreement and Undertaking

4. I recognize the implications of clause 17.07(a)(iii)(C) of the collective agreement if I were not to return to work as stipulated above.

. . .

[44] The grievor testified that, when she signed the agreements, she understood the repayment risk that she faced if she did not return to work for the required period. She did not argue, nor does the evidence adduced in this case reveal, that any of the exceptions to the requirement to repay outlined in clauses 17.04(a)(iii)(C) and 17.07(a)(iii)(C) of the collective agreement subsequently came to apply to her situation.

[45] The grievor's main contention is that, based on the experience of her first maternity and parental leave at Parks Canada, she expected that returning to work for the "federal government" for the required period would discharge any obligation to repay the maternity and parental allowances to INAC that she received during her second period of leave. More specifically, she expected that accepting a position with Parks Canada would allow her to fulfill her return-to-work obligation to INAC. That was her understanding of the proper interpretation of the collective agreement, a collective agreement that, in her opinion, was substantially similar to the collective agreement that governed her leave and her allowance payments during her first period of employment with Parks Canada.

[46] It is not difficult to understand why the grievor's previous experience led her to believe that what happened at Parks Canada would happen again at INAC; that is to say, that INAC would accept that working for a different portion of the federal government would meet the return-to-work obligation, as had been the case when she earlier left Parks Canada to work for INAC. Her original experience at Parks Canada,

however, did not bind the employer once she was working at INAC. In law, the employer was entitled to enforce its rights under the collective agreement. In my view, it interpreted clauses 17.04(a)(iii) and 17.07(a)(iii) correctly. Nothing in those clauses provides that an employee can complete a return-to-work requirement by working with another employer elsewhere in the public service.

[47] I do not accept the grievor's argument that clauses 17.04(a)(iii) and 17.07(a)(iii) of the AV collective agreement do not specify where an employee must return to work. Reading clauses 17.04 and 17.07 in their entirety, and in light of the definition of "Employer" in clause 2.01(j), I find that the return-to-work requirement in the grievor's case must be with the Treasury Board as the employer and, arguably, may be limited to INAC as the "department." If unclear in the text of the collective agreement, a possibility that I do not accept, any doubt is removed by the following paragraphs of the two leave agreements signed by the grievor:

. . .

> ***Maternity Leave Agreement and Undertaking***
>
> *3. . . . I undertake to return following the end of my leave . . . and to work for <u>the Employer</u> . . . .*
>
> . . .
>
> ***Parental Leave Agreement and Undertaking***
>
> *3. . . . I undertake to return following the end of my leave . . . and to work for <u>the Employer</u> . . . .*
>
> . . .
>
> [Emphasis added]

To repeat, given the definition of "Employer" in clause 2.01(j), the term must be read in those paragraphs as meaning the Treasury Board.

[48] The grievor's experience during her first period of employment at Parks Canada was obviously different. While it is not within my mandate to determine whether Parks Canada correctly applied the terms of its collective agreement (Exhibit G-2) in the way it administered the return-to-work requirement in the grievor's case, I do note that the leave agreement that it required the grievor to sign (Exhibit G-3) contained a very different provision from any that appeared in the INAC leave agreements, as follows:

. . .

> *3. . . . I undertake to return following the end of my leave . . . and to work for the Parks Canada Agency, any portion of the Federal public service for which the Treasury Board is the employer or another separate employer listed in schedule I, part II of the Public Service Staff Relations Act . . . .*
>
> . . .
>
> [Emphasis added]

Had INAC and the grievor signed leave agreements that contained such language, the grievor may well have had reason to grieve. That is not the situation before me, and the Parks Canada precedent cannot apply. INAC's treatment of the grievor, as she argued, is indeed inconsistent with what had happened earlier at Parks Canada, but it is consistent with both the wording of the collective agreement and the leave agreement that the grievor signed with INAC.

[49] The grievor advanced several other arguments in support of her position. Those arguments are not persuasive. The fact that INAC transferred, on the grievor's behalf, certain leave, pension and insurance entitlements to Parks Canada, including unused sick leave credits, is not material to the interpretation of clauses 17.04(a)(iii) and 17.07(a)(iii) of the collective agreement. Other provisions of the collective agreement or other regulatory or statutory instruments may well require or facilitate such transfers, but that does not mean that clauses 17.04(a)(iii) and 17.07(a)(iii) should be similarly interpreted in the absence of specific wording to that effect. With respect to the printed format of the grievor's pay stubs, there is no controversy that the words "Government of Canada" appear prominently, but I am unaware of any legal principle that would allow me to invoke their appearance to overcome the definition of "Employer" in the collective agreement. I also do not accept the estoppel argument presented by the grievor. The employer never made representations to the grievor that it would not insist upon the strict application of its rights under the collective agreement; i.e., that it would not require her to repay the maternity and parental allowances if she did not complete the required return-to-work period with the employer. The evidence, in fact, shows the opposite. INAC officials made the repayment requirement clearly known to the grievor. Nor did the grievor establish in evidence any basis that she relied on any undertaking from the employer to her detriment. The subsequent failure to commence repayment deductions for 26 months

may be curious, but nothing in the evidence allows me to draw any reliable conclusions about its significance. It certainly does not set up an estoppel with respect to the originating grievance, nor do I find that there is any other basis for accepting that some form of the doctrine of estoppel applies to this case.

[50] Beyond the reasons stated to this point, I note that subsection 96(2) of the former *Act* prohibits an adjudicator from making a decision that effectively requires the amendment of the collective agreement. That subsection reads as follows:

> ***96.*** *(2) No adjudicator shall, in respect of any grievance, render any decision thereon the effect of which would be to require the amendment of a collective agreement or an arbitral award.*

Were I to accept the grievor's position, I would, in effect, be amending clause 2.01(j) of the collective agreement by altering the interpretation of the definition of "Employer" to include employers in addition to the Treasury Board. I cannot do so.

[51] In summary, the grievor has not met her burden to establish that the employer incorrectly interpreted clauses 17.04(a)(iii) and 17.07(a)(iii) of the collective agreement in the circumstances of this case.

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

(The Order appears on the next page)

V. Order

[53] The grievance is dismissed.

October 27, 2008.

Dan Butler,
adjudicator