

Date: 20090828

File: 166-02-37427

Citation: 2009 PSLRB 106



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**JADWIGA MAJDAN**

Grievor

and

**TREASURY BOARD**  
**(Department of Public Works and Government Services)**

Employer

Indexed as

*Majdan v. Treasury Board (Department of Public Works and Government Services)*

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:*** [Karine Pelletier, Professional Institute of the Public Service of Canada](#)

***For the Employer:*** [Richard Fader, counsel](#)

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Decided on the basis of written submissions  
filed June 24 and July 9, 2009.

## REASONS FOR DECISION

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### I. Grievance referred to adjudication

[1] On April 5, 2004, Jadwiga Majdan (“the grievor”), employed and classified at the AR-04 group and level at Public Works and Government Services Canada (PWGSC), referred a grievance to adjudication under paragraph 92(1)(a) of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35 (“the former Act”). Her grievance reads as follows:

*Grievance:*

*I grieve that my work description received April 2, 2004 is not a complete and accurate statement of my duties and responsibilities, as required by Article 20.01 of my collective agreement.*

As corrective action she requested the following:

*I request that I be provided with [sic] accurate and current statement of my duties and responsibilities as required by Article 20.01 of my collective agreement, retroactive to 1 April, 2000.*

[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 former Act.

[3] A hearing was scheduled for December 12 and 13, 2007; however, at the start of the hearing, the parties agreed to try to resolve the matter through mediation.

[4] On December 13, 2007, a settlement was reached, and the parties signed a Memorandum of Understanding. The settlement basically stated that the parties agreed to a process with timelines to develop a job description and send it for classification. I agreed to remain seized of the matter in the event that the parties were unable to agree on a final job description.

[5] On July 3, 2008, Marie-Claude Chartier, Employment Relations Officer, Professional Institute of the Public Service of Canada (PIPSC), informed the Public Service Labour Relations Board (“the Board”) that the parties had successfully agreed to a job description for the grievor’s period of employment “commencing in 2000 up to the time that [the grievor] left the policy Branch in or about 2006.”

[6] On August 1, 2008, Ms. Chartier informed the Board that the PWGSC's Departmental Classification Committee had classified the grievor's position at the AR-05 group and level.

[7] On August 28, 2008, Ms. Chartier informed the Board that the grievor had received the classification rationale that was used to justify the determination of the AR-05 group and level. However, Ms. Chartier was concerned about the job description agreed to by the parties and requested a copy of the job description that the PWGSC had submitted to the Departmental Classification Committee.

[8] On October 10, 2008, the PWGSC informed the Board that Ms. Chartier had received the job description that had been sent to the Departmental Classification Committee.

[9] On June 24, 2009, Karine Pelletier, Employment Relations Officer, PIPSC, informed the Board that the grievor had filed a classification grievance on June 16, 2009. She stated that the following issues remained in dispute:

- (a) The rationale contained a brief description of the relevant facts of this case, which was inaccurate.
- (b) There was no consensus as to whether the grievor was in an acting or a substantive position during the period to which the negotiated job description applies.

[10] On July 9, 2009, the PWGSC stated that it had respected the terms of the Memorandum of Understanding by producing a job description and having it classified (which resulted in a higher classification level). As well, the PWGSC agreed to apply the job description and the new classification (AR-05) to the period from March 2000 to August 2006.

[11] The PWGSC requested that I consider the "rationale" used to determine the classification level by the Departmental Classification Committee. The PWGSC stated that the rationale presented during the grievance process for the classification grievance was not in the grievor's original grievance and cited the Federal Court of Appeal decision in *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.). Classification and the classification review process are not adjudicable, and as such, an adjudicator does not have jurisdiction.

[12] The PWGSC also stated that the grievor now contends that she was on an assignment from her substantive position and that she requests that I declare her appointed to that position. The PWGSC stated that an adjudicator has no jurisdiction to appoint an employee to a position. In addition, this issue did not form a part of the original grievance. The PWGSC requested that the grievance be dismissed since the matter has already been dealt with in accordance with the Memorandum of Understanding.

[13] On July 20, 2009, a teleconference was held with the parties to deal with the PWGSC's objection to my jurisdiction to hear the grievance and to determine whether the terms of the Memorandum of Understanding had been met.

[14] A summary of the teleconference identified two issues that remained unresolved after the Memorandum of Understanding was signed.

## **II. Summary of the arguments**

### **A. For the grievor**

[15] The documentation that the PWGSC provided to the Departmental Classification Committee was plagued with inaccuracies, and therefore, the reclassification decision was based on false information.

[16] No agreement can be reached on whether the grievor was in an acting or in her substantive position from March 2000 to August 2006.

### **B. For the PWGSC**

[17] The rationale behind its decision was determined by the Departmental Classification Committee, and as such, any issues about its decision should be addressed through the grievance procedure by filing a classification grievance.

[18] There was no letter of offer appointing the grievor to a substantive position.

[19] The grievor's representative agreed that the grievor did not receive a letter of offer.

**III. Reasons**

[20] After thoroughly reviewing the letters on file and the Memorandum of Understanding, and following the teleconference, I have decided that a hearing is not necessary.

[21] The issue before me is whether the terms of the Memorandum of Understanding fulfilled the grievor's grievance and the corrective action that she requested.

[22] I have concluded that the grievor's grievance and the corrective action that she sought have been fulfilled by the employer through the Memorandum of Understanding.

[23] The grievor's grievance was about job content and not about acting pay. The grievor received an opportunity to provide input to a job description that reflected her duties and responsibilities. The evidence reveals that the grievor accepted the new job description and that it was then sent to the Departmental Classification Committee. The result was that the position was reclassified to the AR-05 group and level, which was a one-level higher classification than her substantive position.

[24] Unsatisfied with the outcome of the classification review, the grievor used the appropriate redress mechanism and filed a classification grievance.

[25] Section 7 of the former *Act* enshrines the principle that the employer has the right and the authority to determine the organization of the public service.

[26] The issue about the "rationale" used by the Departmental Classification Committee to determine the grievor's group and level is integral to the classification of positions, over which an adjudicator has no jurisdiction.

[27] The issue of whether the grievor was in an acting position was not part of the original grievance. As such, I note that this is not an acting-pay grievance, and I need not comment further.

[28] Therefore, I conclude that the employer has met the terms of the Memorandum of Understanding, and this grievance is dismissed.

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

*(The Order appears on the next page)*

**IV. Order**

[30] The grievance is dismissed.

August 28, 2009.

**D.R. Quigley,  
adjudicator**