

Date: 20090305

File: 566-09-1500

Citation: 2009 PSLRB 27



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

BILGIN BUBEROGLU

Grievor

and

NATIONAL RESEARCH COUNCIL

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Ian R. Mackenzie, adjudicator](#)

For the Grievor: Jon Peirce, Professional Institute of the Public Service of
Canada

For the Employer: [Carolyn Striez, National Research Council](#)

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

[Heard at Ottawa, Ontario,
February 27, 2009.](#)

REASONS FOR DECISION

[1] Bilgin Buberoglu (“the grievor”) grieved the failure of the National Research Council (NRC or “the employer”) to pay him the amount of severance owing under the article for severance for layoff in his collective agreement. The grievance was filed on May 30, 2007, and the final-level reply was issued by the employer on September 18, 2007. The grievance was referred to adjudication on November 2, 2007. The parties have agreed that this grievance will be dealt with by way of expedited adjudication.

[2] The parties provided an agreed statement of facts and an agreed book of documents. At the expedited hearing, the grievor’s representative sought to introduce an additional document that the parties had not agreed upon. This document was a letter of offer of employment to the grievor from the City of Edmonton. The employer’s representative stated that she had no concerns with the document being introduced but submitted that it was not relevant. I allowed the document to be introduced (Exhibit G-1), but after hearing the submissions of the parties, as summarized below, I concluded that the document was not relevant to the determination of this grievance.

[3] The agreed statement of facts is as follows:

The grievor, Bilgin Buberoglu, was a term employee of the National Research Council (NRC). He was employed in the National Guide to Sustainable Municipal Infrastructure (InfraGuide) program in the Institute for Research in Construction (IRC) in Ottawa, Ontario.

At the time of his grievance, the grievor was covered by the Research Officer/Research Council Officer (RO/RCO) collective agreement between the National Research Council and the Professional Institute of the Public Service of Canada that expired on July 19, 2007. (Exhibit A)

At the time of his grievance, the grievor worked as a Technical Advisor for Waste Water Systems and was classified at the RCO-4 group and level.

The grievor commenced employment with the NRC as an RCO-3 as a term employee from July 3, 2001 to July 2, 2003. (Exhibit B)

On June 12, 2002, the grievor’s term was extended until March 31, 2005.

On January 1, 2005, the grievor was promoted to the RCO-4 level.

On January 28, 2005, the grievor's term was extended to March 31, 2006.

On March 9, 2006 the grievor's term was extended to June 30, 2006.

On May 31, 2006 the grievor's term was extended until June 29, 2007. (Exhibit C)

In March 2007 the InfraGuide program was not able to secure funding and the program was subsequently shut down (Exhibit D).

On March 12, 2007, the grievor was notified that his term employment would end early due to operational reasons. (Exhibit E) He was given two months notice as per the NRC Policy 5.7: Termination of Employment. (Exhibit F) The grievor's last day of work was May 11, 2007.

On April 30, 2007, the grievor submitted a letter to his supervisor Mr. Denis Bergeron, Director of Codes and Evaluation, notifying him of his intent to retire at the close of business on May 10, 2007. In this letter, the grievor noted that he considered himself to have been laid off and requested severance benefits owing to an RCO employee on layoff. (Exhibit G)

On May 2, 2007 Mr. Bergeron responded to the grievor that the reason for his early end of term was not a layoff but rather due to operational reasons and asked him to confirm that he was actually voluntarily retiring effective May 10, 2007. (Exhibit H)

On May 7, 2007, the grievor submitted a letter to Mr. Bergeron confirming his intent to retire effective May 10, 2007. (Exhibit I)

On May 11, 2007 the grievor retired with 5.85479 weeks of severance pay calculated as per article 25.07 of the RO/RCO collective agreement. (Exhibit J)

On May 30, 2007, the grievor filed a grievance grieving the National Research Council's failure to pay him 6.85479 weeks of severance pay as per article 25.04 of the RO/RCO collective agreement.

As corrective action, the grievor has requested payment of the difference of one week's salary between what he has already received and what he states he should have received.

Submissions for the grievor

[4] The grievor's representative reviewed the agreed facts and noted that the grievor had received five successive extensions of his term employment at the NRC. He also noted that there had been no new funding for the InfraGuide program since 2005. Term employees are not eligible for benefits under the Workforce Adjustment Agreement between the bargaining unit and the employer. However, Mr. Buberoglu did receive a reduced package, including outplacement counselling (Exhibit E).

[5] The grievor stated in his April 30, 2007 letter advising of his decision to retire (Exhibit G) that he considered himself to have been laid off and that, had the program continued, he would not be retiring. He also requested a payment of severance owing on layoff.

[6] I was referred to the employer's Termination of Employment policy (Exhibit F), which defines a layoff as the termination of employment ". . . as a result of lack of work or discontinuance of a function. . ." (at paragraph 5.7.14.1). The grievor's representative stated that it was clear that the grievor lost his employment as a result of a discontinuation of a function. The definition of retirement in the policy (at paragraph 5.7.16) refers to voluntary termination of employment, and the grievor did not leave his employment with the NRC voluntarily.

[7] The grievor's representative stated that to accept the employer's interpretation would be a "severe contortion of the English language." He described the employer's interpretation as a "narrow construction that scarcely bears scrutiny." He urged me to accept a broader definition of layoff that was in line with common sense and equity. It is important to look at what the employer actually did, rather than simply what the employer called it. In this case, the employer was treating the situation as a layoff in everything but name.

[8] In conclusion, the grievor's representative submitted that the true nature of the termination of employment should be recognized and the grievor should receive the appropriate severance as required under clause 25.04 of the collective agreement

between the NRC and the Professional Institute of the Public Service of Canada, which expired on July 19, 2007 (“the collective agreement”).

Submissions for the employer

[9] The employer’s representative noted that the grievor had submitted a letter requesting retirement on April 30, 2007 (Exhibit G). To retire, two conditions must be met as set out in the Termination of Employment policy (Exhibit F, at paragraph 5.7.16.1): “. . . the employee must be eligible to receive an immediate annuity and must voluntarily terminate their employment.” In his initial letter, the grievor did not meet the second criteria, as he said he was not retiring voluntarily. On May 2, 2007, the employer advised the grievor that his retirement must be voluntary (Exhibit H). He was told that should he retire, his termination of employment would be considered a retirement. He was also asked to confirm his decision to retire. The grievor confirmed his intention to retire on May 7, 2007 (Exhibit I). It is the employer’s position that the grievor acknowledged that he was retiring and that he was entitled to severance on retirement as provided for in clause 25.07 of the collective agreement.

[10] In conclusion, the employer’s representative submitted that the grievor received severance on retirement under the collective agreement and that this was the only severance that he was entitled to receive.

Reasons

[11] The collective agreement is the primary source for the rights and obligations of the employment relationship. The collective agreement provides for severance in a number of situations, but the relevant two in this grievance are layoff and retirement. The difference in severance payment is that, for a layoff, the employee receives two weeks of severance for the first year of service, while for a retirement the employee receives one week for the first year of service. The collective agreement makes no distinction in eligibility for severance between term employees and “continuing” or permanent employees.

[12] The grievor’s retirement was not the reason for the end of his employment with the NRC. The employer made a decision to terminate the grievor’s employment and this is the governing reason for the end of his employment. His retirement request occurred after the determination by the employer that his term would end early. The

grievor was clear in his correspondence with the employer that he would have continued to work for the NRC if his employment had not been terminated. His decision to seek an immediate annuity does not change the fact that his employment was ending because of the shutting down of his work unit.

[13] The initial reason given by the employer for the termination of the grievor's employment was an "early termination of term." This is defined in the employer's policy on termination of employment (Exhibit F) as being "... due to a change of needs or finances. . ." (at paragraph 5.7.18.3). Layoff is defined in the same policy (at paragraph 5.7.14.1) as the termination of employment as a result of "... lack of work or discontinuance of a function. . . ."

[14] The employer clearly recognized that the grievor's work unit was being "shut down" (Exhibit D). I find that the definition of layoff contained in the employer's policy is a better fit with the facts of this case. Based on the agreed statement of facts and the exhibits, the employer's decision was a "shut down" or discontinuation of a function rather than simply a situation of "a change of needs or finances".

[15] I therefore conclude that the grievor was entitled to severance in accordance with the severance on layoff provision of clause 25.04 of the collective agreement. Accordingly, the grievance is allowed.

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

(The Order appears on the next page)

Order

[17] The grievance is allowed.

March 5, 2009.

**Ian R. Mackenzie,
adjudicator**