Date: 20110224

File: 566-09-2670

Citation: 2011 PSLRB 24

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

JEFF MACKWOOD

Grievor

and

NATIONAL RESEARCH COUNCIL OF CANADA

Employer

Indexed as
Mackwood v. National Research Council of Canada

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Pierre Ouellet, Professional Institute of the Public Service of Canada

For the Employer: Carolyn Striez, National Research Council of Canada, and Sean F. Kelly, counsel

Decided on the basis of written submissions filed
December 23, 2008, January 28 and February 5, 2009, and February 7 and 11, 2011.

Individual grievance referred to adjudication

[1] On January 9, 2008, Jeff Mackwood ("the grievor") filed a grievance against the National Research Council of Canada (NRC or "the employer"), alleging that he was wrongfully deprived of approximately $140,000 in potential royalty sharing, payable to him under the NRC Inventor and Innovator Award Program (IIAP). At that time, the grievor was a marketing manager, classified at the RCO-05 group and level. He was covered by the Research Officer - Research Council Officer Group collective agreement, signed by the employer and the Professional Institute of the Public Service of Canada ("the bargaining agent") on May 30, 2005 ("the collective agreement"). The employer rejected the grievance at each level of the internal grievance procedure.

[2] The grievance was referred to adjudication on October 22, 2008. The bargaining agent did not indicate then which provisions of the collective agreement were the subject of the grievance but rather referred to the IIAP and the "Terms and Conditions of Employment". On December 15, 2008, in response to a request from a registry officer of the Public Service Labour Relations Board ("the Board"), the bargaining agent indicated that the grievance referred to clause 1.02 of the collective agreement.

[3] On December 23, 2008, the employer stated that it would raise an objection to the adjudicator's jurisdiction since the matter grieved did not relate to the interpretation or application of a collective agreement. On January 28, 2009, the bargaining agent replied that the grievance referred to a failure by the employer to respect the terms of clause 1.02 of the collective agreement and that an adjudicator had jurisdiction to hear the grievance. On February 5, 2009, the employer reiterated its position that an adjudicator did not have jurisdiction to hear the grievance because its substance did not relate to clause 1.02 but to the application of the IIAP. On February 11, 2009, a registry officer of the Board wrote to the parties to inform them that the question of jurisdiction would be brought to the attention of the adjudicator selected to hear the matter and that it should be raised at the outset of the hearing. The file then joined the queue of files awaiting a hearing date.

[4] In December 2010, I was informed that I would be the adjudicator hearing this case. After analyzing the documents on file, I instructed a registry officer of the Board to ask for fresh submissions from the parties on their positions regarding an adjudicator's jurisdiction to hear this grievance. The parties were then advised that the adjudicator might decide the objection raised by the employer based on those

submissions and on what was already on file. The parties were also advised that, if the objection were accepted, the grievance would be dismissed, and the grievance hearing, which was scheduled for April 2011, would be cancelled.

[5] In its February 7, 2011 submissions, the bargaining agent argued on behalf of the grievor that the IIAP is part of the grievor's conditions of employment. Subsection 208(1) of the *Public Service Labour Relations Act* ("the *Act*") stipulates that an employee is entitled to present a grievance on any matter affecting his or her conditions of employment. Furthermore, clause 1.02 of the collective agreement states that the purpose of the agreement is to set forth certain terms and conditions of employment affecting employees. The grievor believes that the employer did not respect his terms and conditions of employment when it arbitrarily applied the IIAP.

[6] On February 11, 2011, the employer reiterated its objection to an adjudicator's jurisdiction to consider this grievance because it did not relate to the interpretation of the collective agreement within the meaning of paragraph 209(1)(*a*) of the *Act*. Contrary to the grievor's submissions, an adjudicator does not have jurisdiction over every grievance affecting an employee's terms and conditions of employment. An adjudicator's jurisdiction is limited to grievances that meet the criteria set out in the *Act* including, but not limited to, the criterion in paragraph 209(1)(*a*). The employer submitted that this grievance fails to meet that criterion and that it thus cannot be referred to adjudication. The essential nature of this grievance is whether the royalties provided to the grievor under the IIAP were contrary to an obligation owed to the grievor under the IIAP. Such a matter can be grieved, but it cannot be referred to adjudication.

[7] The employer also submitted that the grievance should be dismissed because the grievor never raised any allegation of a breach of the collective agreement before the referral of his grievance to adjudication. By proceeding as he did, the grievor did not refer the same grievance to adjudication that he presented to the employer in the internal grievance procedure.

[8] The employer referred me to the following decisions: *Canada (Attorney General) v. Lâm*, 2008 FC 874; *Vaughan v. Canada*, 2005 SCC 11; *Swan and McDowell v. Canada Revenue Agency*, 2009 PSLRB 73; *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.); *Rhéaume v. Canada (Attorney General)*, 2010 FCA 355; and *Shneidman v. Canada (Attorney General)*, 2007 FCA 192.

Reasons

[9] Under section 208 of the *Act*, an employee can grieve almost every one of his or her working conditions as long as no administrative procedure for redress is provided under another Act of Parliament. That point is not at issue because the employer admitted that the grievor had the right to grieve its decision to allegedly deprive him of potential royalties. At issue is whether this grievance can be referred to adjudication pursuant to paragraph 209(1)(*a*) of the *Act*. That paragraph reads as follows:

> ***209****. (1) An employee may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to*
>
> *(*a*) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award….*

[10] The grievor argued that his grievance relates to the interpretation or the application of clause 1.02 of the collective agreement. That clause reads in part as follows:

. . .

> *The purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Council, the employees and the Professional Institute; to set forth certain terms and conditions of employment relating to remuneration, hours of work, employee benefits and general working conditions affecting employees covered by this Agreement.*

. . .

[11] Clause 1.02 of the collective agreement does not deal with the IIAP. Nor does it provide any specific rights to the grievor. Commenting on a comparable clause in *Lâm*, the Federal Court wrote the following:

. . .

> ***28.*** *Article 1 of the collective agreement is a general clause, an introduction or a preface that does not grant any substantive right to employees. There is nothing in the*

> *collective agreement that could support the finding that it was meant to include the Treasury Board policy.*
>
> . . .

[12] I have carefully reviewed the entire collective agreement. It makes absolutely no mention of the IIAP, of the payment of royalties or of any other award program. Since clause 1.02 of the collective agreement does not give any substantive rights to the grievor and since there is no clause in the collective agreement on which he can base his grievance, I conclude that this grievance does not relate to the application or interpretation of the collective agreement. Consequently, I accept the employer's objection that the grievance cannot be referred to adjudication.

[13] Given that conclusion, there is no need to decide the other objection raised by the employer that the grievor never alleged a breach of the collective agreement before the referral of his grievance to adjudication.

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

(The Order appears on the next page)

Order

[15] The grievance is dismissed.

February 24, 2011.

Renaud Paquet,
adjudicator