

Date: 20130910

File: 666-14-9

XR: 666-02-8

Citation: 2013 PSLRB 103

*Budget Implementation
Act, 2009*



Before a panel of the Public
Service Labour Relations Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Complainant

And

OFFICE OF THE AUDITOR GENERAL OF CANADA

Respondent

Indexed as

Public Service Alliance of Canada v. Office of the Auditor General of Canada

In the matter of a complaint referred to the Public Service Labour Relations Board pursuant to subsection 396(1) of the *Budget Implementation Act, 2009*

CONSENT ORDER

Before: David Olsen, A/Chairperson, a panel of the Public Service Labour Relations Board

For the Complainant: Andrew Raven, counsel

For the Respondent: P. Andrew Hayes and Alexander Gay, counsel

Decided on the basis of written submissions,
filed February 20, July 17 and August 8, 2013.

CONSENT ORDER

Order

A. Consent order incorporating the Minutes of Settlement between the Office of the Auditor General and the Public Service Alliance of Canada

Whereas a complaint (“the complaint”) was presented to the Canadian Human Rights Commission (CHRC) on January 9, 2002, pursuant to sections 7, 10 and 11 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6 (“the CHRA”);

Whereas the complaint was referred to the Public Service Labour Relations Board (“the Board”) by the CHRC on January 6, 2011, pursuant to the transitional measures under the *Public Sector Equitable Compensation Act*, S.C. 2009, c. 2, s. 394 (“the PSECA”), as outlined in section 396 of the *Budget Implementation Act, 2009*, S.C. 2009, c. 2 (“the BIA, 2009”);

Whereas the Public Service Alliance of Canada (PSAC), the complainant in this matter, entered into Minutes of Settlement with the Office of the Auditor General (OAG) on February 13, 2013 and requested that the Board issue a consent order that would embody the Minutes of Settlement on February 20, 2013;

Whereas the Board, observing that the Treasury Board (“the TB”) was a named respondent in the complaint but not a party to the Minutes of Settlement, requested submissions from the parties to the Minutes of Settlement on July 4, 2013 and from the TB on July 26, 2013;

Whereas on July 17, 2013, the PSAC submitted that the release clause in the Minutes of Settlement at paragraph 19 includes the claims against the TB and that the TB has no further liability in respect of the complaint relating to employees employed by the OAG;

Whereas on July 17, 2013, the PSAC also submitted, and the OAG confirmed its agreement on the same day, that the Minutes of Settlement address obligations as between the PSAC and the OAG only and that the Minutes of Settlement constitute the resolution of all claims arising out of the complaint as they relate to employees employed by the OAG;

Whereas in its submissions on August 8, 2013, the TB observed that part of the consideration that was negotiated between the OAG and the PSAC was a

comprehensive release that all the parties named as respondents in the complaint would benefit from and took the position that the consent orders must reflect what was expressly negotiated by the OAG and the PSAC;

Whereas the issuance of a consent order does not constitute a legal precedent;

The Board hereby embodies the Minutes of Settlement, dated February 13, 2013, and signed in five originals in Ottawa, Ontario, by Michael Ferguson and Lyn Sachs for the OAG and by Robyn Benson, National President, and Helen Berry, Classification and Equal Pay Specialist, PSAC, into an order, on consent, with its Appendices A and B, attached at the end of the consent order, as follows:

WHEREAS the parties have agreed to settle the issues in the complaint File Number 666-02-08 filed with the Human Rights Commission (“Complaint”) and transferred to the Public Service Labour Relations Board pursuant to the *Budget Implementation Act, 2009*;

AND WHEREAS the OAG is a separate agency, and the Auditor General has the authority under the *Auditor General Act* to exercise the powers and perform the functions of the Treasury Board that relate to human resources management;

THE PARTIES HEREBY agree to the following terms and conditions of settlement:

1. The OAG will pay to all Eligible Employees (as defined below in paragraph 4):
 - (i) In the case of Eligible Employees in the CR, DACON, LS, STOCE, STSCY groups, the sum of fifty percent (50%) of the Annual Pay Equity Adjustment amount(s) set out in Chart 1 of the Memorandum of Agreement between the Public Service Alliance of Canada and the Treasury Board of Canada, dated October 29, 1999 (see Appendix A), applicable to the occupational groups(s) and level(s) of the Eligible Employee to be prorated based on the number of days that the Eligible Employee was employed by the OAG during the Retroactive Period defined in paragraph 4.

- (ii) In the case of Eligible Employees in the CR, DACON, LS, STOCE, STSCY groups, an additional sum of five percent (5%) of the Annual Pay Equity Adjustment amount(s) set out in Chart 1 of the Memorandum of Agreement between the Public Service Alliance of Canada and the Treasury Board of Canada, dated October 29, 1999 (see Appendix A), applicable to the occupational group(s) and level(s) of the Eligible Employee to be prorated based on the number of days that the Eligible Employee was employed by the OAG during the Retroactive Period defined in paragraph 4. This additional sum is being provided in lieu of a formal dispute resolution process, subject to the procedure outlined in paragraph 10 herein.
- (iii) In the case of Eligible Employees in the PE group, the sum of fifty percent (50%) of the retroactive payment amounts contained in Appendix B which are based on the agreement reached between representatives of the Personnel Administration National Assembly (PENA) and the Treasury Board Secretariat dated November 26, 1999, applicable to the level(s) of the Eligible Employee to be prorated based on the number of days that the Eligible Employee was employed by the OAG during the Retroactive Period defined in paragraph 4.
- (iv) In the case of Eligible Employees in the PE group, an additional sum of five percent (5%) of the retroactive payments amounts contained in Appendix B which are based on the agreement reached between representatives of the Personnel Administration National Assembly (PENA) and the Treasury Board Secretariat dated November 26, 1999, applicable to the level(s) of the Eligible Employee to be prorated based on the number of days that the Eligible Employee was employed by the OAG during the Retroactive Period defined in paragraph 4. This additional sum is being provided in lieu of a formal dispute resolution process, subject to the procedure outlined in paragraph 10 herein.
2. Subject to the terms hereof, no other provision, part, benefit, interest payment or entitlement provided under the Memorandum of Agreement

between the Public Service Alliance of Canada and the Treasury Board of Canada, dated October 29, 1999, or the agreement reached between representatives of the Personnel Administration National Assembly (PENA) and the Treasury Board Secretariat, dated November 26, 1999, shall apply to the parties or any Eligible Employee.

3. The amounts paid pursuant to paragraph 1 will be referred to by the parties as the “Pay Equity Settlement”.
4. An “Eligible Employee” is defined as an OAG employee classified as a CR, DACON, STOCE, STSCY during the period of March 8, 1985 to April 1, 1999, or a PE during the period of October 1, 1991 to April 1, 1999, (“Retroactive Period”) and in receipt of a salary, an allowance (maternity allowance or parental allowance), disability benefits or workers’ compensation benefits.
5. An employee who would otherwise be an Eligible Employee, will not be considered an Eligible Employee for any portion of the Retroactive Period during which he or she was a temporary office assistant, a casual employee, or on secondment from another employer.
6. In the event that an Eligible Employee dies or has died before payment of his or her Pay Equity Settlement, then his or her Pay Equity Settlement shall be paid to his or her assigns, heirs or successors, as appropriate.
7. The OAG’s payment to individual Eligible Employees of the Pay Equity Settlement will be structured as follows:
 - (i) 50% of the Pay Equity Settlement will be paid as compensation for lost wages and interest (“Lost Wages Compensation”) and will be subject to regular statutory deductions;
 - (ii) 50% of the Pay Equity Settlement will be paid as compensation pursuant to section 53(2)(e) of the *Canadian Human Rights Act* without deduction for tax to a maximum of \$20,000.00.

- (iii) Should the amount calculated under paragraph 7(ii) that is payable to an individual Eligible Employee exceed \$20,000.00, the excess amount payable shall be treated as Lost Wages Compensation in accordance with paragraphs 7(i) and 8 herein.
8. The parties agree that 100% of the Lost Wages Compensation shall be considered to be wages for all purposes, including superannuation.
9. The Eligible Employees covenant and agree to save harmless and indemnify the OAG from all charges, taxes and penalties which may be made by the Minister of National Revenue requiring the OAG to pay income tax under the *Income Tax Act* in respect of income tax payable by the Eligible Employees in excess of the amounts previously withheld and in respect of any and all charges, taxes and penalties which may be made on behalf of or related to the *Employment Insurance Act* or the *Canada Pension Plan* with respect to any amounts which may in the future be found to be payable by the OAG, subject always to the rights of Eligible Employees to appeal against such assessment or re-assessments.
10. The OAG and PSAC agree to meet to resolve any outstanding items as they arise. PSAC agrees that all claims relating disputed amounts shall be brought to PSAC by Eligible Employees. PSAC agrees that no dispute involving payment amounts to an individual Eligible Employee will be brought to the OAG unless the Eligible Employee has provided evidence to PSAC to support the claim, and the disputed amount exceeds the 5% additional payment provided under paragraph 1(ii) herein.
11. The OAG agrees to provide PSAC with a list of all Eligible Employees within thirty (30) days after the OAG receives the data reports that the OAG has requested from Public Works and Government Services Canada.
12. The OAG agrees to provide Eligible Employees who are currently employed by the OAG with their Pay Equity Settlement by May 31, 2013.

13. The OAG will make its best efforts to obtain addresses from the Public Service Pension Centre for all Eligible Employees who are not currently employed by the OAG.
14. The OAG agrees to send a Notice of Settlement to all Eligible Employees who are not currently employed by the OAG to the address provided by the Public Service Pension Centre or the last known address available to the OAG by October 1, 2013. The OAG will include with the Notice of Settlement an Acknowledgement Card which the Eligible Employee is required to send back to the OAG confirming their contact information by October 1, 2014.
15. All Eligible Employees who are not currently employed by the OAG are required to provide written notification of their current mailing address by October 1, 2014. The written notification must be postmarked no later than October 1, 2014 and addressed to the attention of the Principal, Human Resources, Office of the Auditor General of Canada, 240 Sparks Street, Ottawa, Ontario, K1A 0G6.
16. The OAG shall issue payment to all Eligible Employees who have complied with the Notice requirements in paragraphs 14 or 15 above, by the later of March 31, 2014 or 90 days following the date of written notification or Acknowledgement Card is received by the OAG.
17. Those Eligible Employees who are not currently employed by the OAG and have not complied with paragraph 14 or 15 above shall be deemed to no longer be Eligible Employees.
18. The OAG and PSAC undertake to place on their respective websites information pertaining to the Pay Equity Settlement including the requirement for all Eligible Employees who are not currently employed by the OAG to contact the OAG by October 1, 2014.
19. PSAC agrees that this settlement is in full and final compensation for all incidents alleged in the Complaint against the OAG and forever releases and discharges Her Majesty the Queen in Right of Canada, and all of Her

servants, and the OAG, its directors, officers and all other employees from all claims or causes of action arising out of or relating to the allegations in the complaint relating to the OAG.

20. The parties agree that this settlement shall in no way constitute a precedent in any future or like cases.
21. PSAC and the OAG agree that this settlement is entered into without prejudice to either party and without any admission of liability or wrongdoing on the part of the OAG with respect to the allegations in the Complaint.
22. PSAC acknowledges that it is aware that it has the right to obtain independent legal advice before signing this agreement. PSAC hereby acknowledges and agrees that either such advice has been obtained or that PSAC does not wish to seek or obtain such independent legal advice. PSAC further acknowledges and agrees that the PSAC has read this agreement and fully understands the terms of this agreement and further agrees that all such terms are reasonable and that PSAC signs this agreement freely, voluntarily and without duress.
23. The parties consent to the Minutes of Settlement being made an order of the Public Service Labour Relations Board for the purposes of enforcement.

B. Closure of file 666-14-9

File 666-14-9 is now closed.

September 10, 2013.

**David Olsen,
A/Chairperson**

APPENDIX A

Chart 1 / Diagramme 1
Annual Pay Equity Adjustment / Rajustement annuel de parité salariale

Table with 14 columns (Classification, 1985-1999) and rows for CR1-7, DACTON01-08, EULAI01, EUPEN02, EUTEA01, LS01-05.

Annual rates to be pro-rated based on the time worked during the effective period of each fiscal year.
Taux annuels à être ajustés au prorata en fonction du temps effectivement travaillé pendant l'année financière.

Annual Pay Equity Adjustment / Rajustement annuel de parité salariale

Table with 14 columns (Classification, 1985-1999) and rows for HSHDO01-10, HSPHS01-10, STCOR01-02, STOCE01-03, STSCY01-04, STSTN01-02, STTYP01-02.

Annual rates to be pro-rated based on the time worked during the effective period of each fiscal year.
Taux annuels à être ajustés au prorata en fonction du temps effectivement travaillé pendant l'année financière.

[Handwritten signature]

APPENDIX B

An agreement to settle Pay Equity complaints for the PE Group was reached between the representatives of the Personnel Administration National Assembly (PENA) and Treasury Board Secretariat (TBS) on November 26, 1999. This agreement was ratified by employees in the PE Group, and was then approved by the Canadian Human Rights Tribunal (CHRT) on February 24, 2000.

Retroactive payments under that agreement were based on the level within the PE Group between October 1, 1991 and September 30, 1999 as follows:

PE-0 (PE-DEV), PE-1 and PE-2	\$2,300 per year
PE-3 and PE-4	\$2,500 per year
PE-5, PE-6 and PE-7	\$2,700 per year