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.

<u>Order</u>

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

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. <u>Closure of file 666-14-9</u>

File 666-14-9 is now closed.

September 10, 2013.

David Olsen, A/Chairperson

APPENDIX A

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Annual Pay Equity Adjustment / Rajustement annual de parité salariale														
Classification	1985	1986	1987	1988	1989	1990	1981	1992	1993	1994	1996	1998	1997	1995
CR1	3128	3528_		3980	4013_	_4303_	4818_	4722	4849_	4672-	4875_	4875	137.9_	
CR2	2030	2390	2527	2778	2777	3068	3380	3463	3730	3642	3643	3653	1406	706
CR3	1279	1669	1752	1995	2020	2317	2535	2825	3003	2937	293B	2805	1664	1069
CR4	1158	1520	1684	1981	2030	2411	2938	3066	3237	3172	3177	3130	2036	1589
CR5	398	751	862	1204	1103	1539	2486	2615	2459	2382	2390	2357	1177	731
CR6	2030	2463	2601	3141	3199	3678	6006	6204	4778	4896	4705	4681	3805	3469
CR7	807	1185	1227	1623	1816	2293	5775	5917	3593	3443	3458	3458	2092	2763
DACON01	2097	2185	2676	2745	2949	3201	3357	3646	3850	3600	3603	3603	1441	0
DACON02	318	329	585	580	721	1062	1159	1342	1593	1333	1336	1338	247	0
DACON03	834	907	1321	1378	1620	2038	2148	2384	2647	2401	2403	2379	1024	120
DACON04	4077	4312	4855	5152	5619	6268	6715	7114	7111	6884	6660	6820	3068	383
DACON05	3165	3425	4003	4384	4751	4507	6315	6785	6501	8230	6238	6196	2930	594
DACONOS	2188	2408	2933	3302	3578	4293	5748	8191	6339	5031	5042	5023	2392	570
DACON07	4228	4437	4885	6228	644B	6153	7071	7449	7278	6676	6881	6949	7304	7701
DACON08	3314	3466	3610	4088	4198	4612	6688	6875	5907	5440	5445	6655	6674	6304
EULAIO1	4845	5108	6557	8157 -	6690	7966	11077	11497	8514	9672	8683	9710	9946	10363
EUPEH02	9000	9928	9243	9488	9795	10882	11828	11822	12353	12371	12371	12598	0	368
EUTEA01	2570	2653	2000	2783	3314	4308	4695	4905	6179	6293	5297	4730	202	382
LS01	4664	5020	5335	5897	6532	6896	6483	6898	6875	6933	6938	6995	2798	3121
LS02	1879	2180	2457	2887	3412	3476	3575	4103	3501	3557	3564	3677	103	435
LS03	4386	4718	5065	5343	5943	5960	5731	6081	6017	6040	6038	8272	2389	2757
LS04	4848	5068	5444	5768	6378	6450	6282	6588	6716	7472	7471	7686	1139	1361
L\$05	5962	6248	6378	6799	7883	8078	8278	8425	9218	10164	10164	11340	5547	5369

Chart 1 / Diagramme 1

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

Annual Pay Equity Adjustment / Rajustement annual de parité salariale														
Classification	1985	1086	1987	1988	1989	1990	1001	1992	1003	1894	1,005	1008	1997	1998
HSHDO01	1443	1391	1607	2211	2205	2351	2232	2654	2160	2037	2180	2117	2685	2983
HSHDO02	1443	1391	1097	2211	2205	2351	2232	2654	2160	2037	2180	2117	2686	2983
HSHD003	1443	1381	1897	2211	2205	2351	2232	2654	2160	2037	2180	2117 .	2686	2983
HSHDO04	1443	1301	1697	2211	2205	2361	2232	2654	2160	2037	2180	2117	2688	2983
HSHDO05	1443	1391	1887	2211	2205	2351	2232	2654	2160	2037	2160	2117	2886	2983
HSHD008	1443	1391	1897	2211	2205	2351	2232	2654	2160	2037	2180	2117	2666	2983
HSHDO07	1443	1391	1897	2211	2205	2351	2232	2854	2160	2037	2180	2117	2686	2083
HSHDO08	1443	1391	1897	2211	2205	2351	2232	2664	2160	2037	2180	2117	2696	2983
HSHDO09	1443	1391	1897	2211	2205	2361	2232	2654	2160	2037	2160	2117	2685	2983
HSHDO10	1443	1391	1867	2211	2205	2351	2232	2654	2160	2037	2180	2117	2686	2983
HSPH501	1443	1391	1897	2211	2205	2351	2232	2664	2160	2037	2160	2117	1442	1544
HSPHS02	1443	1301	1897	2211	2205	2351	2232	2654	2160	2037	2180	2117	1442	1544
HSPHS03	1443	1301	1897	2211	2205	2351	2232	2654	2160	2037	2180	2117	1442	1544
HSPHS04	1443	1391	1867	2211	2205	2351	2232	2654	2160	2037	2180	2117	1442	1544
HSPH505	1443	1391	1897	2211	2205	2351	2232	2864	2160	2037	2180	2117	1442	1644
HSPHS08	1443	1301	1697	2211	2205	2351	2232	2654	2160	2037	2180	2117	1442	1644
HSPHS07	1443	1391	1697	2211	2205	2351	2232	2854	2180	2037	2180	2117	1442	1544
HSPHS08	1443	1391	1897	2211	2205	2351	2232	2664	2160	2037	2180	2117	1442	1544
HSPH509	1443	1391	1897	2211	2205	2351	2232	2664	2160	2037	2160	2117	1442	1544
HSPHS10	1443	1391	1897	2211	2205	2351	2232	2654	2160	2037	2180	2117	1442	1544
STCOR01	0	0	0	. 0	0	0	0	0	0	0	0	0	0	0
STCOR02	Ð	D	0	0	0		b. 0	0	0	0	0	D	0	-
STOCE01	2229	2311	2538	2808	2927	3408	3848	3871	4133	3965	3988	3968	1265	260
STOCE02	848	Đ41	1353	1584	1697	2150	2439	2640	2907	2747	2750	2757	1544	1105
STOCE03	452	638	901	1133	1241	1702	1950	2177	2450	2278	2284	2253	1201	847
STSCY01	2151	2290	2710	3018	3202	3751	4020	4278	4548	4300	4403	4413	1751	875
STSCY02	1275	1304	1784	2074	2280	2752	3000	3250	3521	3378	3384	3338	1855	1304
STSCY03	0	D	0	0	0	372	827	616	1103	936	842	902	393	289
STSCY04	0	0	0	0	0	0	0	0	0	D	0	0	0	0
STSTN01	2867	2960	3259	3546	3715	4293	4591	4835	5123	4981	4987	4987	2113	036
STSTN02	2144	2269	2678	2852	3102	3659	3928	4174	4464	4305	4310	4310	2367	1801
STTYP01	4414	4571	4883	5240	5478	6058	6336	6596	6860	6728	6729	6729	2160	323
STTYP02	3421	354B	3814	4128	4311	4838	6088	6327	6596	6427	5430	6430	1710	264

Annual rales lo be pro-raled based on the time worked during the effective period of each fiscel year. Teux annuels à étra ajustés au prorata en forction du lemps effectivement travaillé pendant l'année financière.

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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