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Citation: 2013 PSLRB 87



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

STEPHANIE BOWEN, DENISE LANDRIAULT AND MURIEL REVELLE

Grievors

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Bowen et al. v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Kate Rogers, adjudicator

For the Grievors: Christopher Schulz, Public Service Alliance of Canada

For the Employer: Caroline Engmann, counsel

Heard at Kingston, Ontario,
December 11 to 13, 2012.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] Stephanie Bowen, Denise Landriault and Muriel Revelle (“the grievors”) signed individual grievances on April 2, 2007, which read as follows:

I grieve the employer decisions [sic] as contained in the February 13, 2007 letter by Cheryl Fraser and the March 6, 2007 e-mail by Bonnie Wellman as improper and in contravention of the promised grievance action from Simon Coakeley in his January 10, 2005, final level grievance reply.

[2] For corrective action, each grievor asked for the following:

I request that my employer reconsider these current decisions and take all necessary actions to implement the promised grievance reply actions of January 10, 2005 from ADM Simon Coakeley by rewriting my work description and including all the duties I performed, and that the new, updated WD be evaluated and reclassified properly; I further request, given that these are all national decisions, that this grievance go straight to the final level for hearing and decision.

[3] Other than Ms. Bowen, the grievors were employed as human resources assistant specialists, classified CR-04, in the Ontario Regional Headquarters (ORHQ), of the Correctional Service of Canada (CSC or “the employer”), in Kingston, Ontario. When they filed their grievances, they were members of the Program and Administrative Services bargaining unit (PA) and were covered by the PA collective agreement between the Treasury Board and the Public Service Alliance of Canada (“the union”); expiry date, June 20, 2007 (“the collective agreement”).

[4] In spite of the grievors’ request that the grievances be heard only at the final level of the grievance process, the employer decided to respond to them at the first level as well as at the final level, and it denied them at both levels. Both grievance responses noted that the grievances were untimely but considered their merits. The employer determined that the grievors’ job description had been reviewed as promised in the final level grievance reply of January 10, 2005, and had been found up-to-date. On January 17, 2008, the grievances were referred to adjudication.

[5] During a pre-hearing conference held on October 9, 2012, the employer gave notice that at the hearing it intended to raise a preliminary objection to jurisdiction on

the ground that the grievances disclosed no issue that would bring them within section 209 of the *Public Service Labour Relations Act (PSLRA)*. During that pre-hearing conference, which was presided over by a different adjudicator, the parties agreed that the objection to jurisdiction would be dealt with on the first day of the adjudication hearing and that the remaining days of the hearing would be used to deal with the grievances on their merits, assuming that there was jurisdiction.

[6] As determined during the pre-hearing conference, on the first day of the hearing, the employer made a preliminary objection to jurisdiction on the ground that the grievances did not include subject matter that could be referred to adjudication under paragraph 209(1)(a) of the *PSLRA*. The employer also argued a secondary ground for the objection to jurisdiction, stating that the corrective action sought by the grievors involved the classification of their positions, which is not adjudicable under section 7 of the *PSLRA*.

[7] After some discussion, the employer agreed that I would have jurisdiction if the grievances concerned only the grievors' job description. Based on the union's assurance that the only matter at issue was whether the grievors had a complete and current job description, as provided for in article 54 of the collective agreement, the employer withdrew the preliminary objection to jurisdiction made on the ground that the grievance did not disclose an issue that fell within section 209 of the *PSLRA*. It was agreed that the grievances would proceed on their merits. However, the employer reserved the right to argue an objection to jurisdiction based on other grounds as part of its argument on the merits.

[8] During the course of the hearing, an issue arose concerning Ms. Bowen's grievance. Although on both the grievance and reference to adjudication forms Ms. Bowen stated that she was employed in the Human Resources ("HR") Section as an HR assistant specialist, classified CR-04, she acknowledged during cross-examination that, in fact, she had not been in that position and had not been working in the CR classification since February 2004. As a result, her grievance was withdrawn from adjudication.

II. Summary of the evidence

[9] The parties agreed that the testimony and evidence presented at the hearing would apply to both grievances. The union called Ms. Landriault, Ms. Bowen

and John Emerton to testify and adduced 16 documents in evidence. The employer called Gordon Hamilton, Bonnie Wellman and Mike Sadler to testify and adduced nine documents into evidence.

[10] The grievors were employed as human resources assistant specialists, classified CR-04. The job description in question was a national generic job description, effective June 2002. It was entered in evidence as Exhibit E-3. On April 1, 2007, the grievors received a new job description and were reclassified to the level of CR-05. These grievances concern only the job description in place between June 2002 and April 1, 2007.

[11] The HR section of the ORHQ, where the grievors worked, was organized into separate functions or disciplines during the relevant period. According to the evidence given by Ms. Landriault and Mr. Sadler, there were three main HR portfolios, which were broadly identified as staffing, classification and staff relations. In addition, there was a separate compensation portfolio. The organization chart, entered as Exhibit E-5, showed regional chiefs for staffing and recruitment, for classification, and for staff relations, and a regional manager for compensation. Under each regional chief were officers who were supported by HR assistant specialists.

[12] The grievors worked in the area of staffing. Ms. Landriault testified that there were five or six HR assistant specialists in HR during the period in question. According to the organization chart, four of the six HR assistant specialists worked in the area of staffing. The chief of staffing and recruitment during the period in question was Tom Stolfa. One staffing officer, Mr. Emerton, reported to him. The grievors also reported to Mr. Stolfa, although on a day-to-day basis they worked with Mr. Emerton.

[13] The HR assistant specialists in the staffing area helped the staffing officer run competitive processes, deployments and interdepartmental staffing processes. Ms. Landriault testified that she worked with the staffing officer to draft letters of offer, which are legal documents; as such, they were required to be accurate. In cross-examination, she acknowledged that letters of offer were generated from a template. She entered all the information concerning the applicant's group and level, the probationary period, and the salary and applicable benefits. The letters of offer also included a paragraph on employment equity. She attached an employment equity self-identification questionnaire to them.

[14] To determine the applicable salary level, Ms. Landriault testified that she required knowledge of compensation. She stated that letters of offer for positions in the tradesperson category required her to calculate salaries from hourly rates. She also had to determine the different allowances, such as the Inmate Training Differential allowance and the Penological Factor Allowance, which applied to the position. She testified that she used the Human Resource Management System (HRMS) to verify information and that she entered the necessary data into the HRMS.

[15] Mr. Emerton, who was the staffing officer in the ORHQ from 1997 to 2008, worked with Ms. Landriault. He confirmed that she was required to calculate salary in two instances. She had to enter the salary range when preparing competition posters, and she had to calculate salaries and allowances when preparing the letters of offer. He also stated that she was responsible for entering the information into the HRMS.

[16] When preparing letters of offer, an HR assistant specialist had to verify the position number for the position in question, to determine whether the position was excluded, to identify the security level for the position and to ensure that the position was active. Ms. Landriault testified that if the position was not active, she had to ensure that the classification section reactivated it. She stated that she was required to obtain classification information necessary for the letters of offer and to ensure that staffing requests were accurate. In order to obtain the necessary information, she said that she frequently retrieved the files herself from the file system maintained by the classification section.

[17] Mr. Emerton testified that the grievors were required to use classification information when opening staffing files. He stated that there are position files for every position, which are the domain of the classification section. The primary documents in the position files are the work description, organization chart, desk audit or on-site report, position evaluation, and classification decision form. In addition, the position file might contain an official languages form, showing the position's linguistic profile. When a staffing request was made, a competition file was opened. The HR assistant specialist would open the file and ensure that the mandatory documents were placed in it. Mr. Emerton stated that the HR assistant specialists would pull the position files from the classification section and copy the relevant documents, ensuring that they were complete.

[18] Ms. Landriault testified that she also performed work related to employment equity. She stated that the employment equity manager, Bob Fisher, was collecting data on employment equity to determine whether staffing should be targeted for employment equity groups. She stated that she helped maintain an applicant inventory restricted to employment equity groups and that she collected data from the information provided by applicants for Mr. Fisher's use.

[19] Recruitment was another area where Ms. Landriault testified that she provided assistance. She stated that during the period in question, the CSC wanted to hire 1000 new correctional officers; therefore, all staffing officers and HR assistant specialists were involved in recruitment, which involved checking applications for completeness, answering questions from applicants and updating inventory lists. Ms. Bowen, who was an HR assistant specialist during that period, testified that she and the other HR assistant specialists in the staffing portfolio attended job fairs in pairs as departmental representatives. She stated that they would answer questions from the public about job opportunities in the CSC, explain how to apply for jobs and give out information sheets. In addition, they would hand out promotional items. She stated that she was directed to attend the job fairs by the chief of staffing and recruitment.

[20] Mr. Emerton testified that recruitment was a separate function from staffing. He stated that a separate unit was created to handle recruitment, which was headed by Barry Friel until 2005. However, in cross-examination, he was not able to identify a separate recruitment section on the organization chart (Exhibit E-5). Mr. Emerton stated that when he performed recruitment work, he reported directly to Mr. Friel. He stated that, by virtue of his involvement in recruitment, Ms. Landriault also would have been involved as his assistant and would have attended job fairs with him, along with the other HR assistant specialists who worked in staffing.

[21] Ms. Landriault testified that, sometime before June 2003, she attended a training course for staffing assistants held in Ottawa, at which she met staffing assistants from other regions and departments. She discovered that she and the other HR assistant specialists in the Ontario Regional Headquarters were the only ones classified CR-04, even though they were doing the same work as the other staffing assistants attending the training course.

[22] As a result of that information, Ms. Landriault and the other HR assistant specialists filed a grievance in July 2003 (Exhibit G-2), alleging that their job

description did not adequately reflect their duties and responsibilities and that they were performing the duties of an HR Assistant Generalist.

[23] In response to that grievance, Lynn Lajoie, Regional Administrator of Human Resources of the ORHQ, asked them to provide a copy of the work description changes they wanted. The grievors provided the requested information, based on the HR assistant generalist job description (Exhibit G-7), on September 12, 2003. They followed up that information on October 27, 2003, with an additional document highlighting examples of their work in other HR areas (Exhibit G-8). Ms. Lajoie forwarded the information provided by the grievors to CSC National Headquarters (NHQ) in Ottawa on October 30, 2003, and asked that the NHQ classification section review it (Exhibit G-9).

[24] On January 10, 2005, Simon Coakeley, Assistant Commissioner for Human Resource Management, CSC, partially allowed the grievance filed on July 3, 2003. In his response, he stated that the grievors' work description would be reviewed to ensure that it was complete and current and that the updated and signed work description would then be evaluated by the classification section.

[25] In response to the final-level reply to their grievances, the grievors and other HR assistant specialists in the ORHQ HR Section sent a memo to Mr. Stolfa to which they attached a draft work description that they wanted classified and applied to them (Exhibit G-4, Appendix D). Ms. Landriault testified that she expected to be reclassified to a higher level following the adoption of the job description that the assistant specialists had provided.

[26] Ms. Landriault testified that in October 2005, Sandra Pinard was sent from the NHQ to conduct a desk audit of her work. According to Ms. Landriault, Ms. Pinard reviewed the grievors' job description with her, as well as the draft job description the grievors had provided to Ms. Lajoie in 2003. Ms. Landriault received a copy of Ms. Pinard's draft report and provided extensive comments to Ms. Pinard in response. In addition, she provided a number of other documents to Ms. Pinard (Exhibit G-4).

[27] On May 28, 2006, Mr. Sadler, who was the acting regional administrator of HR in the Ontario Regional Headquarters, replacing Ms. Lajoie, sent Ms. Pinard's report and a summary of additional key activities performed by the grievors to Mr. Hamilton, who was an organization and classification advisor in the NHQ (Exhibit G-3). Mr. Sadler

testified that, to the best of his recollection, he was asked to address undertakings made by Mr. Coakeley in the 2005 final level response to the grievors. He stated that he had the copy of the draft job description provided by the grievors and their comments on the desk audit report. There were some suggested tasks that the grievors wanted included in their job description that he thought made some sense. However, he testified that he also wanted to be certain that the grievors were trained in the outlined tasks. Therefore, he thought that it would be prudent to add the duties as an addendum to the existing job descriptions and to ask the grievors not to perform them until a classification review was completed and until he had an opportunity to ensure that they were trained in them.

[28] The four tasks that Mr. Sadler isolated from the overall list of duties identified by the grievors were “Calculates salaries, Supervisory Differential and ITD upon appointment to include this information in the letter of offer”; “Conducts interviews with students”; “Participates on selection boards for entry level clerical competitions”; and “Sets objectives, assigns and monitors work of HR Student Placement and casual employees.” He testified that he identified those tasks as being most aligned with the grievors’ jobs.

[29] He testified that he was aware that the HR assistant specialists calculated salaries but, because letters of offer are legal documents, the consequences of an error were great. Therefore, he believed that the calculations made by the HR assistant specialists should be reviewed by a compensation analyst. On interviewing students, Mr. Sadler testified that he understood that the HR assistant specialists provided information and that they held initial meetings with students at job fairs. He stated that he did not believe that they actually interviewed students but rather met with them. Concerning the participation on selection boards, Mr. Sadler testified that he was told that the HR assistant specialists provided administrative support to selection boards rather than participating as board members. On the task of setting objectives, Mr. Sadler testified that he was told that it was a responsibility shared with the HR advisors and officers.

[30] Mr. Hamilton was an organization and classification officer at the NHQ between 1998 and 2007. In 2006, he was the acting regional chief of classification and was responsible for the classification program in the CSC’s Ontario region. He testified that each region of the CSC structure had its own HR organization, although they all

reported to the regional deputy commissioner. The regions had some autonomy in terms of their structure. In some regions, HR was centralized, and the staff was located at the regional headquarters. In other regions, HR services were delivered at the operational unit level, and staff was located in CSC institutions. Mr. Hamilton explained that the CSC's Ontario Region was decentralized and that the institutions had HR structures on-site, in addition to the HR Section at the Ontario Regional Headquarters.

[31] Mr. Hamilton testified that he was asked to review the grievors' job description and the additional duties identified by Mr. Sadler. In particular, he was asked to determine whether the additional duties would make a difference to the classification group and level. He was also asked to determine whether the duties should be added to the job description, given that it was national and generic.

[32] Mr. Hamilton testified that he reviewed the grievors' job description (Exhibit E-3) and the desk audit report and its appendices (Exhibit G-4). In particular, he noted areas where the duties performed by the grievors did not appear to coincide with their job description. The areas of non-coincidence were identified under the "Conclusions" section of the desk audit report, and Mr. Hamilton testified that he examined them closely. He also considered the information provided by the grievors to Ms. Pinard. However, he did not speak to the grievors and relied only on the materials provided to him.

[33] Mr. Hamilton prepared a report that he sent to his superior, Ms. Wellman (Exhibit G-5). He concluded that the work that the grievors wished to have added to their job description was already included implicitly, if not explicitly. He found that the duties identified by the grievors related to staffing and were not inconsistent with their roles as HR assistant specialists. He testified that the HR generalist job description that the grievors wanted applied to them was not, in fact, appropriate because it applied to people who worked in more than one HR stream, while the grievors worked only in one stream. The HR assistant generalist job description is classified at a higher level because the incumbents are required to have knowledge of a full range of duties for all areas of HR, while HR assistant specialists work in only one area. He also noted that workload is not reflected in job descriptions. He stated that despite the fact that the grievors liaised with other areas, they did not rotate through the disciplines, as an HR assistant generalist would.

[34] In cross-examination, Mr. Hamilton explained that there are three core disciplines in HR: staffing, labour relations and classification. He acknowledged that there are other HR areas, such as compensation, but stated that the other areas are not in the professional HR category. He stated that both recruitment and employment equity are a subset of staffing.

[35] Mr. Hamilton stated that while he examined in particular the duties isolated by Mr. Sadler, he considered everything and found that most duties were subsets of other duties. Once he sent his report to Ms. Wellman, his work on the matter was completed.

[36] Ms. Wellman was Director of Organizational Design and Corporate Classification for the CSC and worked at the NHQ between 2006 and 2007. Mr. Hamilton reported to her at that time. She explained that classification issues that had a national impact, such as those affecting generic job descriptions, were handled by her group. She stated that she did not personally conduct the review of the grievors' job description but that she would have been briefed about it. She also testified that the decision not to revise the grievors' job description would have been hers and it would have been based on the recommendations made by Mr. Hamilton. She stated that she would have briefed Cheryl Fraser, who was the assistant commissioner of HR at the relevant time.

[37] Ms. Wellman stated that she did not recall sending an email to one of the HR assistant specialists on March 6, 2007 (Exhibit E-4) but said that it was consistent with the commitment that had been made by Mr. Coakeley in response to the grievors' initial grievance of 2003. She said that she was simply responding to that commitment and advising the grievors that the work had been done.

[38] Ms. Wellman testified that the review of the grievors' job description was undertaken because of the undertaking given by Mr. Coakeley in his final-level response to the grievors' grievance of 2003. In cross-examination, she explained that the process of reviewing a job description involves examining both what the incumbent states that he or she actually does and what the job description states should be done. A desk audit is done as a fact-finding exercise to determine what the incumbent does. She stated that desk audits identify anomalies between what incumbents actually perform and what the job description states that they are supposed to do.

[39] Ms. Wellman explained that when she responded to a request from one of the HR assistant specialists for an update on the job description review on March 6, 2007 (Exhibit E-4), a decision had already been made to change the way work was organized in the HR Section at the ORHQ. She stated that, effective April 1, 2007, the employer decided to apply the generalist model to the ORHQ HR Section, and that, therefore, the HR assistant generalist job description would apply rather than the HR assistant specialist job description that the grievors wanted to change. She stated that the HR assistant generalist job description was very different from that of the HR assistant specialist and that the CSC's Ontario Region had to develop rotational plans and ensure training for staff before changing to the new job description.

III. Summary of the arguments

A. For the grievors

[40] The union argued that the grievors' job description failed to reflect the realities of their work in a number of areas. In particular, the job description recognized only three distinct disciplines in the HR area, omitting the work done in employment equity and recruitment. The grievors testified that they provided support and assistance in more than staffing, which was their area of specialty. They testified that they worked in the area of classification because they retrieved their files from the classification section without waiting for the specialist assistant working in that area to assist them. They also reactivated positions without waiting for her assistance.

[41] The grievors also testified that they provided assistance in the area of employment equity. They stated that they compiled data and administered competitive processes for employment equity candidates. They maintained applicant inventories that were restricted to employment equity candidates. The union argued that the grievors' work in the area of employment equity was outside their speciality of staffing because employment equity was shown on the organization chart as a separate entity.

[42] The grievors also worked in the area of recruitment. They testified that they attended job fairs, gave candidates information and appropriate forms, and kept track of recruitment information. The union argued that the work done by the grievors in recruitment demonstrated that they worked in more than one specialist area. Even though the employer contended that recruitment was not a separate HR discipline, the evidence demonstrated that there was a separate manager for recruitment up to 2005.

[43] The union argued that the fact that the grievors' job description did not reflect their work in HR disciplines outside of staffing establishes that the job description was not accurate. Citing *Jennings and Myers v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20, at para 51 and 52, the union contended that a job description must reflect the realities of an employee's work situation and must not omit duties or responsibilities that an employee is required to perform.

[44] Arguing that the grievors' job description did not provide an accurate reflection of the work that they were expected to perform, the union requested that it be expanded to include the HR disciplines that the grievors actually worked in. The job description should also include amendments to the key activities that reflected the requirement that they work in multiple disciplines.

[45] The union noted the efforts that the grievors had made to resolve their dissatisfaction with their job description. On July 3, 2003, they filed a grievance alleging that their job description was not accurate (Exhibit G-2). On January 10, 2005, the final-level reply to that grievance allowed it to the extent that the employer agreed to undertake a review of the job description and to submit the updated version for a classification review. In the fall of 2005, a desk audit of the grievors' work was performed, and over 76 separate duties and functions were examined (Exhibit G-4). In May 2006, Mr. Sadler isolated four of those duties and forwarded them to Mr. Hamilton to determine whether adding them to the job description would alter the classification and level. On February 13, 2007, the employer informed the grievors that the duties that they wished to have included in their job description were already implicitly included and that, therefore, there would be no changes to their classification and level. However, the employer had already determined on February 1, 2007 that the work of HR assistant specialists in all regions would be changed to that of HR assistant generalists and that they would be reclassified from CR-04 to CR-05, effective April 1, 2007. Accordingly, the grievors were reclassified to CR-05 on April 1, 2007. They filed this grievance on April 3, 2007.

[46] The union contended that this grievance was not a continuing grievance. Citing *Galarneau et al. v. Treasury Board (Correctional Service of Canada)*, 2009 PSLRB 1, it stated that the principles concerning continuing grievances relate to compliance with time limits rather than redress. The decision of the Federal Court of Appeal in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813(C.A.)(QL), does not bar redress

beyond 25 days. *Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 161-2-703 (19931220), held that the *Coallier* decision is not a bar to redress exceeding the 25-day period preceding the filing of the grievance. The union noted that in *Butra v. Treasury Board (Indian and Northern Affairs)*, PSSRB File No. 166-2-22221 (19930430), the adjudicator awarded redress going back 10 months, stating that the limitations set out in the *Coallier* decision had not been consistently applied. In *Dervin v. Treasury Board (Department of National Defence)*, 2009 PSLRB 50, the adjudicator changed a work description retroactively.

[47] The union contended that *Macri v. Treasury Board (Indian and Northern Affairs)*, PSSRB File No. 166-2-15319 (19871016), provided a rational explanation as to why the *Coallier* decision should not apply. In particular, the union noted the adjudicator's concern in that case that if *Coallier* acted as a bar to remedying a wrong beyond 25 days, there would be incentive for the employer to delay dealing with grievances.

[48] The union argued that the grievors tried diligently to pursue their concerns with the employer over their job description. They filed a grievance in 2003 and allowed the employer the time it needed to review their job description. But the review process was very narrow and did not address the grievors' concerns. As soon as they realized that the process would not result in the changes they wanted, they filed these grievances. For that reason, the union argued that the grievors' job description should be amended retroactive to June 2003.

B. For the employer

[49] The employer argued that, at their cores, these grievances concern classification and that, therefore, the Public Service Labour Relations Board (PSLRB) does not have jurisdiction to hear them. In essence, it is clear from the grievance statement that the grievors wanted their job description replaced with the HR assistant generalist job description, which was classified at the CR-05 level. The second part of the corrective action requested was that their job description be re-evaluated and reclassified.

[50] The employer stated that the evidence supports its contention that the grievors' real purpose in pursuing these grievances was to achieve reclassification to the CR-05 level. In response to the desk audit done in October 2005, the grievors provided a number of documents, which were included in Exhibit G-4. Among the documents they

provided was a version of the HR assistant generalist job description that they wanted applied to them. They also included a memo that they sent to the regional chief of staffing and recruitment in April 2005, in which they made it very clear that they wanted management's support to reclassify their positions, for a number of listed reasons. Furthermore, Mr. Emerton testified that the grievors' concerns were not so much about the inaccuracies of the job descriptions as about the fact that in other regions, HR assistants, who were generalists, were classified at a higher level than they were.

[51] The employer cited *Tousignant and Paradis v. Treasury Board (Correctional Service of Canada)*, 2005 PSSRB 13; *Gvildys v. Treasury Board (Health Canada)*, 2002 PSSRB 86; *Charpentier and Trudeau v. Treasury Board (Environment Canada)*, PSSRB File Nos. 166-2-26197 and 26198 (19970131) and *Cooper and Wamboldt v. Canada Revenue Agency*, 2009 PSLRB 160, in support of its position that an adjudicator does not have the jurisdiction to deal with classification grievances. In particular, the employer noted the similarity between the issue in *Charpentier and Trudeau* and the issue in these grievances.

[52] The employer also argued that there is an element of mootness to the corrective action sought by the grievors, since their job description changed and they were reclassified two days before these grievances were filed.

[53] On the merits of these grievances, the employer argued that the issue is whether it met its obligation under article 54 of the collective agreement to provide a current and accurate work description. In answer to that question, the employer contended that the work description was complete and accurate. The employer undertook to review it in response to the grievors' first grievance of 2003 and did so, finding that it was an accurate reflection of the grievors' duties.

[54] Citing *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69; *Jennings and Myers*; and *Jaremy et al. v. Treasury Board (Revenue Canada -Customs, Excise & Taxation)*, 2000 PSSRB 59, the employer noted that a job description need not list all activities or describe them in detail. It is sufficient that the duties be described in general terms.

[55] In these grievances, the job description adequately described the duties expected of the grievors. The evidence showed that the HR Section at the ORHQ, where

the grievors worked, was organized differently from that of other regions. The work was organized in silos, and the HR assistants specialists worked in specialized areas. The organization chart (Exhibit E-5) reflects that structure, and Ms. Landriault confirmed that she worked in the area of staffing, even though she also stated that she worked across the disciplines.

[56] The employer argued that it is necessary to examine the exact nature of the work that Ms. Landriault testified that she performed. In the area of classification, she testified that she retrieved the classification files that she needed to complete her staffing work if the HR assistant specialist in classification was busy. However, she did not testify that she performed any of the core duties pertaining to classification. She also testified that she spent time calculating salaries for letters of offer and suggested that that was work related to compensation. In fact, that work was reflected in her job description. She further testified that she worked in the area of employment equity because she collected statistics used for a report used for analysis, but that work was a purely staffing function.

[57] The employer noted that the grievors' job description was a national generic job description and that it was not required to be detailed. In general terms, the job description included the duties described by the grievors. For example, under the heading "Contextual Knowledge," the job description required them to have knowledge of the processes of the HR disciplines and to identify different sources of information and to apply that information. The job description also required them to have knowledge of a number of pieces of legislation, including that relating to employment equity. The collection of data is also a clearly identified task under the job description.

[58] The employer contended that the grievors bore the onus of demonstrating the deficiencies of the job description, which they did not do. Therefore, they have not met their burden and the grievances should be dismissed. However, if the grievances are allowed, the employer argued that, based on the *Coallier* decision, the remedy should be limited to 25 days before the filing of the grievances.

[59] The employer argued that, in spite of the cases cited on behalf of the grievors, adjudicators have applied the *Coallier* decision. In *Manuel and Reid v. Treasury Board (Department of Transport)*, 2012 PSLRB 9, the adjudicator applied *Coallier* despite the attempts by the grievors in that case to obtain a remedy over a number of years. In *Coquet et al. v. Canada Customs and Revenue Agency*, 2002 PSSRB 24, the adjudicator

noted that, in his opinion, the grievor's argument that *Coallier* should not apply would have little chance of success. In both the *Macri* and *Dervin* decisions cited by the union, the employer agreed to the time frames identified by the grievors for remedy, but that is not the situation in these grievances. Furthermore, there is no evidence as to exactly what duties the grievors were performing in 2003, which is the start date of their claim.

[60] Even if the *Coallier* decision does not apply to the circumstances of these grievances, the employer contended that the remedy should not extend past the period following their memo in April 2005 to Mr. Stolfa, rebutting Mr. Coakeley's final-level grievance response. An intensive review of the grievors' jobs was undertaken as a result of Mr. Coakeley's response to the first grievance. The employer conducted a desk audit and a thorough classification review. The four duties that Mr. Sadler identified for particular review came directly from the desk audit and the comments provided by the grievors. Although the review took some time to complete, the analysis was complete and thorough and encompassed the entire job description.

C. Union's rebuttal

[61] The union argued that, while the grievance language could perhaps have been clearer with respect to the grievors' concerns about their work description, defects in form should not triumph over substance. Citing *Canada Safeway Ltd. v. R.W.D.S.U., Loc. 454* (1994), 44 L.A.C. (4th) 325, and *Lannigan v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 34, it argued that technical objections should not be allowed to interfere with the right to grieve when it is clear that the employer clearly understood the matter at issue, which in these grievances concerned the accuracy of the job description.

[62] The union noted that while the employer argued that the structure of the ORHQ identified different disciplines in the area of HR, there was no clarity as to the number of disciplines.

V. Reasons

[63] On April 2, 2007, the grievors each signed grievances which stated as follows:

I grieve the employer [sic] decisions as contained in the February 13, 2007 letter by Cheryl Fraser and the March 6, 2007 e-mail by Bonnie Wellman as improper and in

contravention of the promised grievance action from Simon Coakeley in his January 10, 2005, final level grievance reply.

[64] As corrective action, each grievance made the following request:

I request that my employer reconsider these current decisions and take all necessary actions to implement the promised grievance reply actions of January 10, 2005 from ADM Simon Coakeley by rewriting my work description and including all the duties I performed, and that the new, updated WD be evaluated and reclassified properly; I further request, given that these are all national decisions, that this grievance go straight to the final level for hearing and decision.

[65] At the beginning of the hearing, the employer raised two preliminary objections. First, it objected that the grievances disclosed no allegations that would bring them under the jurisdiction of subsection 209(1) of the *PSLRA*. That objection to jurisdiction was withdrawn. Second, it objected that, based on the corrective action sought by the grievors, it was clear that the grievances concerned classification, which is not a matter that falls within the jurisdiction of an adjudicator of the PSLRB. During final argument, the employer also argued that the grievances were moot, as the grievors had been given a new job description and had been reclassified effective April 1, 2007, which was two days before they filed these grievances.

[66] Although there is no doubt that the grievances could have been worded more clearly, the employer's responses to them made it clear that it knew that the grievances concerned a request for an updated job description. While it is also clear that the grievors' requests for an updated job description arose from their determination to be reclassified upward, that intention does not undermine their right to refer to adjudication grievances concerning the content of their job description. I believe, it would be difficult to find any grievance concerning the content of a job description that did not have at its core a desire to be reclassified.

[67] Clause 54.01 of the collective agreement requires the employer to provide a "complete and current" statement of duties, as follows:

54.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating

allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

[68] As evidenced by the grievance responses, the employer was well aware that the grievors considered that their job description was not complete and current and that they sought to have it changed as a preliminary step toward reclassification. I do not believe that the grievors attempted to amend their grievances or to change grounds at adjudication. To the extent that these grievances concern the obligation arising under clause 54.01 of the collective agreement, I find that I have jurisdiction to consider them. I think that to hold otherwise would be unduly technical. I agree with the arbitrator in *United Electrical Workers, Local 504 v. Canadian Westinghouse Co. Ltd.* (1964), 14 L.A.C. 279, at 283, as quoted in Gorsky, *Evidence and Procedure in Canadian Labour Arbitration*, at 4-19, when he stated that “. . . a board of arbitration should seek to entertain and determine the real, as opposed to the ostensible grievance between the parties, because to do otherwise would be a denial of natural justice to the parties.”

[69] Although the grievors were given a new job description and were reclassified effective April 1, 2007, two days before these grievances were filed, I do not find the grievances moot. In *Dervin*, which considered similar facts, the adjudicator found that question raised by the grievance was not purely academic and that it raised a “live controversy.” He stated at paragraph 11 that the grievor in that case “. . . was fully entitled to receive an accurate statement of duties for the period of time that he occupied the position.” I agree with that statement as it applies to the facts of these grievances. Although I do not have jurisdiction to consider issues relating to classification, the grievors have the right to pursue such issues through other administrative processes, and a finding that these grievances are moot could unduly prejudice that right.

[70] As I have found that the employer's objections to jurisdiction and on mootness cannot succeed, it is necessary to consider these grievances on their merits. The grievors bore the onus of establishing that their work description was not complete and current. For the reasons that follow, I find that they did not discharge that burden.

[71] The grievors were HR assistant specialists who worked in the area of staffing. The essence of their claim is that, although they worked in the area of staffing, they also provided services to the other HR disciplines in the HR Section of the ORHQ.

Ms. Landriault testified that she provided classification services because she frequently retrieved the classification files that she needed when preparing letters of offer and opening competition files rather than waiting for the HR assistant specialist who worked in classification to get them for her. To open staffing files, she testified that she had to verify that the position was active, and if not active, she had to ask the classification section to reactivate it. She stated that she worked in the area of compensation because she was required to calculate salaries, allowances and benefits for competition posters and for letters of offer. She also claimed that she worked in the area of employment equity because she collected data from competition records for the use of the employment equity officer and maintained an applicant inventory based on employment equity criteria. She stated that she worked in the area of recruitment because she attended job fairs, answered questions from potential applicants and the public on jobs within the CSC and helped applicants fill out forms.

[72] The employer did not dispute that the grievors performed the tasks described by Ms. Landriault in her testimony but claimed that they were all related to their positions as HR assistant specialists who worked in staffing. The employer contended that the tasks were implicit in their job description and that they were naturally and logically connected to their staffing functions. The employer stated that no evidence was presented that the grievors performed any of the core duties of an HR assistant specialist in labour relations or in classification or any of the core duties of a compensation assistant.

[73] The grievors presented a number of documents describing the additional duties that they contended should be included in their work description and that they believed supported their claim that they worked in multiple HR areas, such as, for example, Appendix A of the desk audit report (Exhibit G-4). However, according to the desk audit report, Appendix A was produced by a working group of Ontario Region HR assistant specialists, who were not otherwise identified. In her testimony, Ms. Landriault isolated the tasks related to compensation, classification, employment equity and recruitment, and therefore, in the absence of any other evidence and explanation, I have considered only those tasks.

[74] I agree with the employer that all the duties described by Ms. Landriault appear to be a natural function of the grievors' duties as HR assistant specialists in staffing. The classification functions that Ms. Landriault claimed to do, for example, were

necessary steps arising from her work preparing staffing and competition files. The same was true of the salary and benefits calculations that she alleged was compensation work. Maintaining employment equity data was equally a function of her role in staffing. Likewise, it is difficult to separate recruitment from staffing. Although there was some suggestion that recruitment formed a separate function before 2005, at the time these grievances were filed, the organization chart (Exhibit E-5), identified the grievors' supervisor, Mr. Stolfa, as the chief of staffing and recruitment. There was no separate recruitment section on the chart.

[75] The grievors did not testify that they rotated through the work sections, as, for example, the HR assistants in the CSC's Quebec Region did. They did not state that they replaced or assisted on a regular basis the HR assistant specialists in the other areas. All the tasks they identified arose from their own functions in staffing. Mr. Sadler and Ms. Wellman testified that the HR Section in the ORHQ was structured into separate sections or silos during the period in question and that the grievors were not expected to work outside their assigned area. There was no evidence that they did, either on a regular or irregular basis.

[76] The work description applicable to the grievors (Exhibit E-3) provided that they delivered “. . . administrative support services to one of the following areas (classification, staffing, staff relations) for Human Resources management, directors and employees of CSC.” I find that that is what they did. Even if, as the grievors contended, recruitment and employment equity were separate areas within HR, the work that they performed relating to those areas was incidental to their staffing functions. For example, Mr. Emerton, who was a staffing officer, testified that the grievors worked with him when he performed recruitment-related functions and attended job fairs with him by virtue of their roles as his assistants. The evidence simply did not establish that the grievors worked in multiple areas, as they alleged.

[77] The grievors' job description was national and generic. By necessity, such work descriptions are not detailed. However, as noted in *Jennings and Myers*, as long as a generic work description does not omit any particular duties or responsibilities that an employee is required to perform, it will satisfy the requirement that it be a complete and current statement of duties.

[78] The grievors' job description appears to include the duties that they wish to have added. For example, under “Key Activities,” it states that the HR assistant

specialists process documents and maintain and update records. It provides that the assistant specialist provides “. . . information and advice to managers, employees, union representatives and members of the general public” on various HR matters. It provides that the assistant specialist “. . . creates and prepares reports by identifying, extracting, sorting and organizing pertinent data within several automated systems in order to provide the supervisor, other Human Resources staff and managers with information to make decisions.” In my view, those key activities describe the work that the grievors did.

[79] Other parts of the work description equally apply to the work that the grievors described before me. Under the section titled “Information for the Use of Others,” the assistant specialist is expected to exchange information with other HR staff and managers, other public service departments and the general public, to explain HR processes and to answer questions. The assistant specialist is also expected to create, maintain and update files used by the HR officers and managers, and to search for and retrieve HR-related information, policies and other information from different sources for use in staffing processes.

[80] The grievors bore the onus of demonstrating the deficiencies of their job description. The thrust of their argument was that the job description did not recognize the work that they were required to perform in other HR disciplines. I have found that they were not required to work in any meaningful way outside their assigned area of staffing and that the work that they did was implicit in the HR assistant specialist job description. Therefore, the grievors did not establish that they did not have a complete and current work description, as required under clause 54.01 of the collective agreement.

[81] Much of the evidence and argument before me related to the grievors’ ongoing attempts to have their job description changed. The purpose of that evidence was to justify a remedy retroactive to 2003, when the grievors filed their first grievance. Because I have found that the grievors’ statement of duties was complete and current, it is not necessary to consider the arguments on remedy. However, I would like to note that the grievors argued that this was not a continuing grievance. That argument was somewhat surprising, in light of the fact that the grievors filed these grievances after April 2, 2007, which was more than 25 days after receiving the letter from Ms. Fraser, that informed them that the employer would not amend their work description. She

was the decision-maker. If these were not continuing grievances, then they were quite probably untimely, as alleged by the employer in its responses to them. Because the employer accepted that the grievances were continuing at the hearing, the question of timeliness did not arise.

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

(The Order appears on the next page)

V. Order

[83] The grievance of Stephanie Bowen is withdrawn.

[84] The grievances of Denise Landriault and Muriel Revelle are dismissed.

July 24, 2013.

**Kate Rogers,
adjudicator**