Date: 20140210

File: 566-02-6355

Citation: 2014 PSLRB 16

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

GILLES MAILLET

Grievor

and

TREASURY BOARD
(Department of Employment and Social Development)

Employer

Indexed as
Maillet v. Treasury Board (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: Augustus Richardson, adjudicator

For the Grievor: Andrew Beck, Public Service Alliance of Canada

For the Employer: Josh Alcock, counsel

Heard at Sydney, Nova Scotia,
June 12 and 13, 2013.
Teleconference held July 17, 2013.

I. Introduction

[1] This is a job description or statement of duties grievance. By agreement of the parties, the grievance (PSLRB File No. 566-02-6355) is a test case. Its outcome will be relevant to the outcome of a series of similar grievances, referenced in the Public Service Labour Relations Board ("the Board") files as "Deveau and others (PSLRB files 566-02-5449 to 5453)"; see the email dated December 14, 2011, in the Board file.

[2] The predecessor to the Department of Employment and Social Development ("the employer") and the Public Service Alliance of Canada ("the union") were, at the time the grievances were filed, governed by an agreement between the Treasury Board and the union respecting the Program and Administrative Services (all employees) Group with an expiry date of June 20, 2007 ("the collective agreement"). Article 54 (Statement of Duties) of the collective agreement provided 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.*

[3] The grievor complained that the job description in respect of the position of citizen service specialist (CSS) dated September 2008 was not a complete and current statement of his duties and responsibilities as a CSS at that time.

[4] By way of general introduction, amongst other things, the employer provides information to the public about a number of benefit programs, including the Canada Pension Plan (CPP), Old Age Security (OAS) and Employment Insurance (EI). Before October 2008, those employees tasked with providing information about the CPP and OAS held positions that were titled either client service officer (CSO) or service delivery agent 2.5 (SDA). Those tasked with providing information about EI each held a position titled public liaison officer (PLO).

[5] In 2008, as part of a reorganization of its approach to delivering information, the employer reorganized the CSOs and the PLOs into new positions, each titled CSS. The intent of the change was to merge the CSOs and PLOs into one position (CSS) that would be responsible for providing information with respect to the CPP, the OAS and EI. There would no longer be two separate positions to deal with two separate types of benefits — there would be only one to deal with all benefits.

[6] As part of this reorganization, the employer delivered, in late October 2008, a new description for the CSS position, with an effective date of September 14, 2008. (The job description is annexed as Schedule "A" to this decision.) The grievor, who until that point had occupied a CSO position in the employer's Sydney, Nova Scotia, office, grieved as follows on November 20, 2008, ". . . the employer's failure to provide me with a complete and current statement of duties and responsibilities," thus violating article 54 of the collective agreement. By way of remedy, he sought ". . . a complete and current statement of the duties of [his] position, effective from September 15, 2008" (Exhibit U1, Tab 2). About a year later, the employer revised the position description to make it effective September 2006 (Exhibit E2, Tab 1). The grievor's position was that the new description, regardless of whether it was effective September 2006 or September 2008, failed to satisfy the requirements of article 54. The grievor argued that the job description left out a number of key activities, duties and responsibilities. At the hearing before me, the grievor agreed that the CSS job description was accurate as far as it went but that it was missing certain key activities, skills and duties. The items alleged missing were itemized in a list that was entered as Exhibit U3 and that, for convenience, is annexed as Schedule "B" to this decision.

II. The hearing

[7] The hearing took place in Sydney on June 12 and 13, 2013. On behalf of the grievor, I heard his testimony, and that of Jenny MacIsaac, another CSS, who, like the grievor, had held a CSO position in the Sydney office before September 2008. The employer called Bruce Reardon, a service delivery manager in its Sydney office since 1998. There really was little if any dispute on the facts or the evidence. Instead, the dispute was as to the legal effect or characterization of those facts and, in particular, whether the CSS job description satisfied the requirements of article 54 of the collective agreement.

[8] Two books of documents and several loose documents were entered as exhibits. The parties ran out of time at the hearing, and it was agreed that closing submissions could be made by way of teleconference, which took place on July 17, 2013.

III. The facts

[9] As already noted, there was no real issue over the facts as set out in the testimonies of the grievor or the witnesses or in the documents filed as exhibits. That

being the case, I do not see the need to precis the testimonies of the witnesses in detail. It is enough that I set out my findings of fact based on that testimony.

[10] All three witnesses testified as to the type of work and services performed by the CSOs before 2008. The grievor had been a CSO since 1985. Ms. MacIsaac commenced working for the employer in the same year in a clerical position and worked her way up to a CSO position at some point. It was clear from their testimonies that both she and the grievor were experienced and knowledgeable CSOs and that they were often relied upon as such by the employer. I rely upon their testimony for the following findings with respect to their work in the period under review.

[11] As of 2008, and for many years before that, at the beginning of each fiscal year, the CSOs would work on a "National Action Plan" for that year. The plan would identify particular populations that the CSOs would target. So, for example, homeless or aboriginal seniors, employees of particular employers (such as Marine Atlantic) nearing retirement age, or service providers (such as funeral directors or social workers) would be identified and assigned to individual CSOs. The CSOs would then in turn reach out to those populations, contacting leaders, officials, contact persons or representatives in each population, and offer to provide information sessions that would detail the different benefits available under the CPP and OAS programs; see, for example, Exhibit U1, Tabs 3 and 4. The employer had prepared a PowerPoint presentation of roughly 140 slides for national use that covered all aspects of the available benefits and services. The CSOs would then tailor their presentations by selecting slides appropriate to the particular target audience. The CSOs would invite questions at the end of each session. On occasion, particularly when the audience was composed of employees of employers with their own pension plans, attendees would ask about the relationship between the employer's pension plan and the CPP or OAS. Over the years, the grievor had developed some understanding of the pension plans of particular large employers and was often able to field such questions.

[12] The grievor also sometimes responded to questions from local members of parliament (MPs) or members of the legislative assembly (MLAs) who called with questions about the CPP or OAS, either in general or with respect to individual constituents.

[13] The grievor and Ms. MacIsaac would also sometimes be asked by offices in other areas of the Maritimes to perform fieldwork that did not fall into the category of

investigation. For example, in 2002, Ms. MacIsaac was asked by the employer's Halifax office to carry out a field visit of a CPP recipient whose CPP cheques had been returned due to a change in address. Ms. MacIsaac made some inquiries of former neighbours at the address and of the local community services office, although to no avail; see Exhibit U1, Tabs 18 and 19.

[14] One of the key activities of the CSO job description before 2008 was representing the minister at Review Tribunal Hearings and other legal proceedings; see Exhibit U4. The grievor explained that the Tribunal dealt with appeals under the CPP and OAS programs. The CSOs had to review and organize files under appeal and then present the minister's case at hearings. They made notes of what took place, completed observation sheets and then returned the files to their offices. This responsibility had existed since at least 1992 or 1993. The new CSS position did not include that responsibility, which was transferred to the position of Integrity Services Officer; see Exhibit E2, Tab 6. The grievor continued to represent the minister after October 2008 in files that had already gone to appeal when the transition happened, in his words "to give the department time to appoint or train the people needed to represent the Minister," but his involvement in such matters ended in March 2009. The grievor did not provide any evidence as to how many of these files he had in hand as of September 2008; or how many went to a hearing between September 2008 and March 2009. Nor was there any evidence at all from Ms. MacIsaac as to whether she handled any such files during that transition period. This continuation caused some question among the CSSs, as evidenced by an email from Ms. Solange, another CSS, dated October 28, 2008, in which she asked how long the CSSs were expected to participate in hearings. She was told that "nothing has changed" and that she was "to continue attending hearings until advised otherwise" (Exhibit U1, Tab 23).

IV. The transition

[15] Mr. Reardon testified as to the background of the creation of the CSS position. He had become the manager of the grievor and Ms. MacIsaac at the beginning of the employer's fiscal year in April 2009. Before that, he was a regional manager, operating out of the employer's regional office in Sydney. He testified that the CSS role was intended to be that of a generalist. He or she was to promote public awareness of the programs and services offered by the employer. It was not intended to be a specialist role requiring in-depth knowledge of any particular program. The intent was to fill that role with a business expertise advisor (BEA). The expectation was that any detailed

questions, particularly those involving the interaction of the CPP, OAS or EI with private plans, would be referred by a CSS to a BEA, even if the CSS knew the answer. Having said that, Mr. Reardon acknowledged that the grievor and Ms. MacIsaac would have been and continued to be two of the most knowledgeable CSSs in the Sydney office about the CPP and OAS, although they would have known little about those benefits associated with EI in cases of mass layoffs. Mr. Reardon stated that the CSSs were not expected to handle questions about specific cases from MPs or MLAs after October 2008. Any such questions were to be referred to their team leaders, who would then refer them to the appropriate expert (Exhibit E2, Tab 16). However, Mr. Reardon acknowledged that it remained the case that politicians would call the grievor or Ms. MacIsaac on occasion simply because they had been called in the past, their phone numbers were known and they were knowledgeable in the field.

[16] In October 2008, the grievor and Ms. MacIsaac received the new CSS job description. On October 28, the grievor raised a question about the desciption's effective date and was told that "nothing is changing immediately" and that there would be ". . . a transitionary [*sic*] period where we will collectively work towards the establishment of the new structure within the CSB" (Exhibit U1, Tab 22). The reply added that for the time being, ". . . CSO's [*sic*] continue to report to [her] and it's business as usual" (Exhibit U1, Tab 22).

[17] Some of the work done by the CSSs remained the same as it had been when they were CSOs, albeit with some changes. For example, the CSSs still identified target populations each year for the purposes of providing outreach educational services. However, there were two changes. First, the presentation was now standardized out of the employer's headquarters in Ottawa. Each CSS was expected to deliver the same basic presentation based on the same PowerPoint slide pack. Second, the CSSs were expected to provide information with respect to all benefits being managed by Service Canada — the CPP, the OAS and EI. In other words, each CSS, regardless of his or her former position as either a CSO or PLO, was expected to give the same generic presentation. Of course, that meant that some CSSs lacked familiarity with programs that had formerly been outside their particular bailiwicks. This issue — both for former CSOs and PLOs and for new employees — was addressed by way of information sessions.

[18] It was clear from the testimonies of the grievor and Ms. MacIsaac that both were experienced and knowledgeable CSOs. The employer often asked them whether they were interested in acting as instructors in sessions designed to provide instruction on the CPP and OAS benefits to other employees. In late 2007 and early 2008, the grievor served as an instructor in the CPP and OAS benefits courses delivered to new front-end employees in Glace Bay and Halifax (Exhibit U1, Tabs 5, 6, 8, 9 and 10).

[19] This involvement in providing information sessions continued somewhat after — and because of — the transition. In August 2008, Mr. Reardon asked both the grievor and Ms. MacIsaac whether they had any interest in assisting with workshop training sessions to be held late in that year for the CSSs in Moncton, New Brunswick (Exhibit U1, Tabs 14 and 15). Ms. MacIsaac testified that the grievor and she were asked because they "were recognized as the experts in the office." The grievor volunteered and was told that his ". . . knowledge and expertise made the session a success" (Exhibit U1, Tab 16). During one of the sessions, a question about the payment of CPP death benefits came up, and the grievor later provided a detailed discussion of the issue to the workshop participants (Exhibit U1, Tab 17). The grievor acknowledged in cross-examination that the sessions in 2008 were unique because the former PLOs had to be brought up to parity with the former CSOs with respect to their knowledge of the CPP and OAS programs. Ms. MacIsaac was also involved in such training sessions. In October 2009, Ms. MacIsaac was asked to show a former CSO how to access and use the employer's "IRTDS" (computer) system (Exhibit U1, Tab 12). She testified that the request was made to her because she was acknowledged as one of the experts in the office. She also provided a CPP and OAS session to a new service delivery team leader that same month (Exhibit U1, Tab 13). Her supervisor asked her to provide similar training to an employee in early 2010 (Exhibit U1, Tab 11).

[20] Mr. Reardon testified that providing such instruction was not a part of the CSS job duties. Moreover, by 2010, most training had been shifted online. However, and particularly during the transition period, he would ask experienced employees whether they could help with training. He did not expect them to help, and it would not have been an issue had they refused.

[21] Field visits were another issue. As noted earlier, some CSOs in the past had been asked from time to time by other employer offices to perform field visits. Whether these visits amounted to investigations is unclear. Certainly, the job description of an

SDA 2.5/CSO described the work as including the need to work outside the office to, amongst other things, ". . . investigate allegations of non-entitlement or potential fraud" (Exhibit U4). Ms. MacIsaac testified that field visits were not frequent but that either she or the grievor performed them when required.

[22] There is no such requirement in the CSS job description. However, in July 2009, a team leader (one Mr. Mullins) emailed Mr. Reardon about the issue of field visits. Mr. Mullins noted his understanding that the grievor and Ms. MacIsaac reported to Mr. Reardon, and went on as follows (Exhibit U1, Tab 19):

> *Previously, if we had outreach work to be done in CB (i.e. field visits that do not fall under the category of investigations), we could refer them to CSOs. With the new structures, I'm not sure where we are with that. Are Jenny and Gilles still able to do field visits? I have a case where we have a letter for a 91 year old client advising her of a $35,641.10 overpayment. In the past with such cases, I have had CSO's deliver the letter personally, given the magnitude of the situation, so that we could deliver the news with a more gentle touch and reassure the client that there are options to be flexible with the repayment terms if what is proposed will cause financial hardship.*
>
> *If you could advise whether this is still a possibility with the CSOs, I would greatly appreciate it.*

[23] Mr. Reardon replied that he was ". . . not sure of the protocol either, but whatever the case, [he was] OK with Gilles [Maillet] and Jenny [MacIsaac] helping out whenever they can" (Exhibit U1, Tab 19). Mr. Mullins then asked the grievor and Ms. MacIsaac whether it would be possible for them to do the field visit "in the next week or two" (Exhibit U1, Tab 19).

[24] Similarly, in June 2010, the grievor was asked by Don Horne, a benefit expertise consultant, whether he was "allowed to do any field visits," adding that he had the following (Exhibit U1, Tab 20):

> *. . . [a] complex residence file and the client has lied to us several times. To me the best way to resolve the matter is to have someone with a lot of ISP experience to go visit the guy and go through all of the documents and papers he has. The client lives in North Sydney.*

[25] The grievor checked with Mr. Reardon and said that he told him that he was "OK with [the grievor] doing a field visit," which was accordingly performed (Exhibit U1, Tab 20). Mr. Reardon explained in his testimony that during the transition period, he was uncertain of what the protocol was, and in his words, "so I didn't have a problem helping someone in the Halifax office with an issue here [in Cape Breton] . . . but it was not an expectation that I would demand of [a CSS]." In March 2011, the grievor was asked to perform a similar visit for a similar purpose (Exhibit U1, Tab 21).

[26] The grievor testified that in his opinion, these types of field visits were a regular part of his work after the transition to the CSS position. However, he also admitted that he enjoyed doing them. But he also did not know whether other CSOs or (after 2008) CSSs did field visits. He also agreed in cross-examination that the number of field visits he performed tailed off after 2008, that he did not know whether someone else had assumed responsibility for that task, that he had never been told that he had to perform such visits and that he did not know what would have happened had he refused to do a field visit after 2008.

V. Submissions on behalf of the grievor

[27] At the commencement of his submissions, the union's representative advised that items 1 and 5 on the list (Exhibit U3) would not be included in his submissions. He conceded that item 1, the assessment of community needs, was already covered by the 2008 CSS job description. He also agreed that item 5, acting as the minister's representative in fraud cases involving income support and EI, was not within the duties of a CSS.

[28] The grievor's representative also submitted that in considering the proposed additions to the CSS job description, it was crucial to keep in mind that, on the evidence, the job description came into effect as of September 2008, well before the changes were actually made. In other words, in this case, the grievor and Ms. MacIsaac continued to perform tasks they had performed as CSOs after September 2008, even though those tasks were not part of the CSS job description. The grievance was dated November 19, 2008, and it was as of that date that the CSS job description had to be evaluated. If the grievor was as of that date performing tasks not outlined in the CSS job description, then article 54 of the collective agreement had been breached, and the job description had to be amended.

[29] The grievor's representative also cited the following cases: *Jennings and Myers v. Treasury Board (Department of Fisheries and Oceans),* 2011 PSLRB 20; and *Manuel and Reid v. Treasury Board (Department of Transport),* 2012 PSLRB 9.

A. Item 2 - Developing strategies for outreach

[30] The grievor's representative submitted that the grievor did much more than simply receive information from the employer's head office to deliver to different client groups or the public. Rather, he had to design a presentation within the context of the particular group to whom the information was being delivered. A CSS had to develop appropriate approaches to ensure that the information was conveyed in the most effective fashion possible.

B. Item 3 - Delivery of training to front-line staff

[31] The grievor's representative submitted that the grievor was not training just former CSOs or PLOs during the transition period. He was also training front-line staff — those who took calls from the public or individual claimants. He had done this before the CSS position came into effect, and he continued to do this well after October 2008. Indeed, he was in effect told in October 2008 that nothing had changed; see Exhibit U1, Tab 22. He was also performing training in late 2009, well after the introduction of the CSS job description.

C. Item 4 - Analyzing and investigating cases

[32] The grievor's representative submitted that the evidence was clear that this activity had been a responsibility of the CSOs before October 2008. It was indeed part of their job description. But, while the duty was not listed in the CSS job description, it continued to be performed by the grievor. Indeed, he had conducted field visits in 2010 and 2011. According to Mr. Reardon, the fact that a CSS was not required to perform it did not explain why the grievor was still being asked, after 2008, whether he would perform such visits.

D. Item 6 - Representing the minister at Review Tribunal hearings

[33] The grievor's representative submitted that, at least as of the date on which the grievance was filed, the grievor was still required to perform this task, despite that it was not part of a CSS's duties or responsibilities. He pointed to an email from a Ms. Solange, another CSS, dated October 28, 2008, in which she had asked how long

the CSSs were expected to continue to participate in hearings and had been told that "nothing has changed" and that she was ". . . to continue attending hearings until advised otherwise" (Exhibit U1, Tab 23). The representative submitted that that was not just a transitory holdover. Rather, it was a recognition that as of the date of the grievance's filing, those in a CSS position were still expected to represent the minister at hearings, even though it was not part of their job description.

E. Item 7 – In-depth knowledge of legislation, regulations and policies

[34] The grievor's representative submitted that it was clear that the grievor and Ms. MacIsaac had detailed knowledge of the relevant legislation and regulatory framework and that the grievor employed this knowledge in his work as a CSS. They continued to answer questions from MPs. Mr. Reardon relied on them to provide training or advice to staff.

F. Item 8 - Knowledge of the impact of income support programs on private plans

[35] The grievor's representative submitted that on the evidence it was clear that the grievor knew about private pension plans and that he was capable of answering, — and did from time to time answer — questions about the interface between public and private plans. Moreover, there was no change in this activity until at least April 2009, when the grievor became Mr. Reardon's direct report. Moreover, for CSSs to perform their duties effectively, they needed to possess such knowledge.

G. Item 9 - Deliver information sessions and training

[36] The grievor's representative submitted that both the grievor and Ms. MacIsaac had performed such activities long after October 2008. It was also clear that the general information packages provided to the CSSs by the employer's head office still had to be tailored to individual client groups or representatives.

H. Item 10 - Analyze cases referred by the front-line centres

[37] The grievor's representative submitted that this activity continued until at least September 2009. When front-line staff had a question they needed an answer to, they would call or email the grievor, who would then advise them how best to respond.

I. Item 11 - Physical effort

[38] The grievor's representative submitted that working at computers, travelling to and attending meetings, and making presentations all involve physical effort, which should be reflected in the job description.

J. Item 12 - Delivering training to service delivery staff

[39] The grievor's representative submitted that it was clear that the grievor and Ms. MacIsaac provided training after October 2008. The fact that they were asked whether they were interested in providing such training reflected the degree of their experience and expertise. This went beyond simply answering questions of colleagues. Rather, the grievor and Ms. MacIsaac were in fact crucial to ensuring that the front-line staff were given — and were guided by — the right information.

K. Item 13 - Interviewing clients outside the office

[40] The grievor's representative submitted that the clear reality was that on occasion, the grievor had to and did interview clients outside the office. This happened when he was a CSO, and it continued when he was a CSS.

VI. Submissions on behalf of the employer

[41] The submissions of the employer's representative covered two basic issues.

[42] First, with respect to the operative date, he submitted that it should be September 14, 2008, which was the effective date of the CSS job description at the time the grievance was filed.

[43] Second, with respect to the CSS job description, he submitted that it already covered the items listed by the grievor or that the items had not been shown as regular or key parts of the grievor's activities and for that reason should not be included in the job description.

A. Operative date

[44] The employer's representative submitted that I ought to first determine whether the CSS job description was a complete and current statement of the grievor's duties and responsibilities when the grievance was filed in November 2008. He agreed that an adjudicator did have jurisdiction to determine whether particular duties and

responsibilities were performed as of a particular date (i.e., the effective date); see, for example, *Temmerman v. Treasury Board (Department of Human Resources Development),* 2005 PSSRB 8, at para 90, but that did not permit him or her to step outside the bounds of the grievance as filed; see *Burchill v. Canada (Attorney General),* [1980] 1 F.C. 109 (C.A.). In this case, despite the employer's retroactive change of the effective date to September 14, 2006, the effective date for the purposes of determining whether the grievor's job description was complete and current was as of November 2008; that is, September 14, 2008.

B. Was the CSS job description complete and current as of September 2008?

[45] The employer's representative went through the items listed by the grievor as missing from the CSS job description. In view of the concessions on behalf of the grievor it was not necessary to address items 1 and 5.

1. Item 2

[46] The employer's representative submitted that "develops strategies for delivery of outreach staff" was no more than word-smithing, and was in any event implicit if not explicit in a number of skills contained in the CSS job description. For example, under "skill" was found "knowledge of the community to contribute to the development of local office operational plans." The relevance of such knowledge was that it enabled the CSS to develop plans — i.e. strategies — designed to reach the target audience.

2. Item 3

[47] The employer's representative agreed that delivering training to front-line staff was not part of the CSS job description but submitted that the evidence did not support a conclusion that this was part of the key activities or duties of a CSS as of September 2008. Any training was provided on a voluntary basis; it was not a requirement of the position.

3. Items 4 and 10

[48] The employer's representative submitted that the CSS job description, under "working conditions," did include a reference to ". . . a requirement to work off site when visiting clients, client groups, employers, forums and attending meetings." He suggested that that was broad enough to include field visits. Moreover, and in any

event, there was no evidence that any CSS as of September 2008 was analyzing cases. Any visits carried out were done voluntarily.

4. Item 6

[49] The employer's representative submitted that while some representation of the minister continued after September 2008, it ceased as of March 2009. Such representation was no more than a transitory holdover from matters that had been referred to the Review Tribunal before the new job description came into effect in October 2008.

5. Items 7 and 8

[50] The employer's representative submitted that there was no evidence to support a conclusion that in-depth knowledge of the statutory and regulatory framework was a necessary or key part of the CSS position as of October 2008. Mr. Reardon's evidence, which was not contested, was that the CSS position was intended to be that of a generalist, not a specialist. While there was no doubting that the grievor, by virtue of his years of experience, had a lot of knowledge about the legislation and its regulations, it did not mean that it was a requirement of the CSS position. Nor was there any evidence establishing that knowledge of the interface between private pension or benefits plans and those overseen by the employer was necessary. Moreover, the evidence was clear that neither the grievor nor Ms. MacIsaac had any detailed knowledge of or experience with EI. That being the case, if such detailed knowledge were indeed a requirement of the position, then both of them would have to look for new jobs.

6. Item 9

[51] The employer's representative submitted that the delivery of information sessions was already captured under the key activities of the CSS job description. Delivering "... tailored and/or bundled information, advice and guidance ... to respond to citizen, employer and community needs" was, in effect, the delivery of "... information sessions and training on changes in programs ... that meets the needs of the organization and learning styles of the target audience." And while on the evidence there might have been a certain amount of fine-tuning each presentation to each audience, the grievor's evidence established that doing so was no longer permitted after September 2008. The CSSs had to deliver a standard PowerPoint

presentation supplied to them by the employer's headquarters; they were no longer allowed to mix and match particular slides to particular audiences.

7. Item 11

[52] The employer's representative submitted that the physical effort of working at computers and attending meetings was already included under "physical effort" in the CSS job description.

8. Item 12

[53] The employer's representative submitted that there was no evidence that the grievor, or indeed any CSS, was required to provide information sessions as a normal part of his duties as a CSS in October 2008. At best, there was a sporadic and limited role for it, stemming from the grievor's own admitted expertise and the needs of the employer during the transition period — a role that, as well, was only voluntary.

9. Item 13

[54] The employer's representative submitted that there was already a requirement in the CSS job description, under "working conditions," for a CSS ". . . to work off site when visiting clients, client groups, employers, forums and attending meetings." The proposed addition was, accordingly, unnecessary and added nothing. What mattered is that the job description indicated that the CSSs on occasion had to go off site — it did not matter that it did not detail why such off-site work might be necessary.

VII. Reply on behalf of the grievor

[55] With respect to the scope of the grievance, the grievor's representative submitted that the decision in *Burchill* was a bar to a new issue or a new grievance being raised. It was not a bar to a new argument being made in support of the grievance as filed. He submitted that while there might be an argument barring an adjudicator from moving an effective date forward, there was nothing to bar him or her from moving it backwards. Moreover, the employer's unilateral decision to retroactively move the effective date back from September 14, 2008, to September 14, 2006, in effect, stated that the grievor had no accurate and complete job description between those two dates.

VIII. Analysis and decision

[56] There are two issues before me, as follows:

a. What is the operative date for the purposes of determining whether the job description for the CSS position satisfies the requirements of article 54 of the collective agreement?

b. Does the job description satisfy the requirements of article 54?

A. Operative date

[57] The CSS job description was issued to the grievor in late October 2008. At that time, it was said to be effective September 14, 2008. The grievor filed his grievance and sought as a remedy, ". . . a complete and current statement of the duties of [his] position, effective from September 15, 2008." About a year later, the employer changed the effective date to September 14, 2006.

[58] To add to the confusion, the evidence established that some activities found in the CSO job description, while no longer contained in the CSS description, nevertheless continued to be carried out to some degree after October 2008. For example, representing the minister at Review Tribunal hearings continued until March 2009. Some field interviews were performed even later than that.

[59] I will commence with the observation that on the evidence, the operative date for the purposes of determining the grievance is September 14, 2008. The CSS job description was originally delivered in October 2008, with that effective date. The grievor filed his grievance with respect to that job description. Before me then is the question of whether the grievor had a complete and current job description as of October 2008. The job description in effect at that point was that outlining the work of a CSS.

[60] The related issue is what I am to make of the fact that the grievor (and Ms. MacIsaac) continued to perform some CSO duties after September 14, 2008, even though those duties were not included in the new CSS job description. In my view, the answer to that question depends upon the facts.

[61] It is clear that there was a period after October 2008 during which some of the activities that had been performed under the CSO job description continued to be performed from time to time. The existence of such an overlap in a case like this is not surprising; nor does it necessarily invalidate the substance of the job description at issue. Within the limits of the collective agreement and any relevant statutory or regulatory provisions, the employer is entitled to reorganize its workforce to create new job descriptions, to transfer duties and responsibilities from one position to another, and to move existing employees out of old positions into new ones. During any such transition there are bound to be occasions when some tasks carried out under the old job description may still be performed from time to time. The fact then that an employee continues to perform some of the duties contained in their former position does not necessarily mean that the new job description is inaccurate. Only when the duty involved is something substantial enough to include in a job description and the overlap continues for an extended period may one suspect that the duty in question is in fact part of the new position and then consider whether that duty ought to be included in the new job description.

[62] In my opinion, the evidence before me did not establish either of the above two criteria. While I recognize that "representing the Minister" before a Tribunal is more than substantial enough a duty, at least on a theoretical basis, to warrant inclusion in any job description, I was provided with little to no evidence regarding what this duty actually involved with respect to the grievors during the transition period in particular. There was no evidence as to how many files were carried through to a hearing during the period in question, how much preparatory work, if any, was required of the grievors, whether all of the grievors had carried files or only some had done so. While Mr. Maillet suggested that there had been some, Ms. MacIsaac did not give any such evidence. While I accept that the evidence established that some files continued to be handled during the transition period, this is not enough to turn the handling of those files into a key duty or activity warranting inclusion in the job description.

[63] The field visits that were conducted after October 2008 were infrequent at best, and on the evidence, were done voluntarily. The grievor admitted that he found them interesting, and that being the case, it is not surprising that he would volunteer to do them. But an employee who voluntarily performs a task not within his or her job description cannot then bootstrap himself or herself into a different job description (or, as in this case, allege that his or her job description is, accordingly, inaccurate).

Only when an employer requires such tasks to be performed or so organizes the workforce that such tasks have to be done if the employee's job duties are to be accomplished might one conclude that the duties in question are no longer volunteer. But, on the evidence, the visits that were performed from time to time were not required to be done as part of their duties as a CSS. They were performed voluntarily.

[64] Accordingly, I am of the opinion that the operative date for the purposes of determining whether the CSS job description complies with article 54 of the collective agreement is, for our purposes, September 14, 2008. The proper approach is to compare the job description with those duties, activities and responsibilities carried out and intended to be carried out by the grievor as of the introduction of the new job description. Duties not within the job description that continued to be carried out after that date are relevant if, on the evidence, they continued to be a material, ongoing part of the grievor's duties. They are not relevant if the evidence establishes that their performance was either voluntary or the result of the type of transitory overlap that occurs when old job descriptions evolve into new ones.

B. Was the CSS job description complete and current?

[65] As explained as follows in *Jennings and Myers,* at paras 51 and 52;

> 51 *An employee's job description is the cornerstone of the employment relationship. In* Breckenridge et al. v. The Library of Parliament, *PSSRB File Nos. 466-LP-225 to 233 and 241 to 245 (19960912), the adjudicator stated the following: "It is a fundamental, multipurpose document which is referred to with regard to classification, staffing, remuneration, discipline, performance evaluation, identification of language requirements, and career planning." In* Currie v. Canada (Canada Customs and Revenue Agency), *2006 FCA 194, at para 26, the Federal Court of Appeal wrote that a work description "…must reflect the realities of the employee's work situation since so many aspects of the employee's rights and obligations in the workplace are bound to his or her Work Description." Its importance is such that, under the collective agreement, any employee is entitled to request a complete and current work description.*
>
> *52 . . . a work description must contain enough information to accurately reflect what the employee does. It must not omit a "… reference to a particular duty or responsibility which the employee is otherwise required to perform"; see* Taylor v. Treasury Board (Revenue Canada —

> Customs & Excise), *PSSRB File No. 166-02-20396 (19901221). A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement. In* Hughes v. Treasury Board of Canada (Natural Resources Canada), *2000 PSSRB 69, at para 26, the adjudicator wrote the following: "A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished." See also* Currie et al. v. Canada Revenue Agency, *2008 PSLRB 69, at para 164;* Jaremy et al. v. Treasury Board (Revenue Canada - Customs, Excise & Taxation), *2000 PSSRB 59, at para 24; and* Barnes et al. v. Canada Customs and Revenue Agency, *2003 PSSRB 13. The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and "…it is not the adjudicator's role to correct the wording or the expressions that are used," so long as they broadly describe the responsibilities and the duties being performed (see* Jarvis et al. v. Treasury Board (Industry Canada), *2001 PSSRB 84, at para 95; and see* Barnes, *at para 24.*

[66] Having said that, it is also the case that the employer cannot avoid its obligation under article 54 of the collective agreement ". . . by using vague or general wording that does not fully describe an employee's work"; see *Carter v. Treasury Board (Department of Fisheries and Oceans),* 2011 PSLRB 89, at para 21, cited in *Thom v. Treasury Board (Department of Fisheries and Oceans),* 2012 PSLRB 34, at para 86.

[67] The onus was on the grievor to establish a breach of article 54 of the collective agreement. Having carefully considered his testimony, as well as that of Ms. MacIsaac and Mr. Reardon, and having compared that testimony with the exhibits and in particular the CSS job description, I am satisfied that the grievor has failed to establish that the CSS job description did not provide a complete and current statement of the duties and responsibilities of his position.

[68] I come to this conclusion for a number of reasons.

[69] I will deal first with the key activities (listed in Exhibit U3) that the grievor stated are missing from the CSS job description. In my view, the activity of developing "strategies for delivery of outreach services" (item 2) is redundant, inasmuch as the key activities listed in the CSS job description — providing tailored information, establishing relationships with local clients and stakeholders, delivering presentations, and so on — are in my view "strategies" for the delivery of information about the employer's programs.

[70] With respect to items 3 and 12 (delivery of training to front-line and service delivery staff), there was no evidence that the delivery of training was a regular or required part of the grievor's duties or responsibilities as a CSS. The evidence went no further than establishing that the grievor, as one of the most experienced CSOs (or, after 2008, CSSs in the employer's Atlantic region), was a welcome instructor when or if he volunteered to participate in training sessions. Nor did the evidence establish that the grievor was involved in "analyzing and investigating cases" (item 4). Analysis and investigation imply a power to make decisions as to how a particular file should be handled. Visiting a local client at the request of the employer's Halifax office does not, in my opinion, amount to either. At best, it means only that the grievor would collect information for a decision to be made by someone else. Moreover, and in any event, there was no evidence that the grievor (or, for that matter, Ms. MacIsaac) was ever required to perform such field visits.

[71] As noted, the grievor's representative conceded that item 5 (representing the minister) was no longer carried out by the grievor. In my view, this concession ought to extend to item 6 (representing the minister at Review Tribunal hearings), inasmuch as the grievor's testimony made it clear that he had conducted none since March 2009 and that those he had conducted after October 2008 and before March 2009 were simply holdovers that he continued on with before others were trained to take over that function. These latter hearings were simply a product of the transitory overlap that was discussed earlier in this decision.

[72] Turning to the skills that the grievor alleged were missing from the CSS job description, stating that it requires ". . . in depth knowledge of legislation, regulations, and policies . . . specific to service offerings . . . when advising on eligibility requirements . . . and when providing training" (item 7), adds nothing to the skills already listed in the CSS job description. And while I accept on the evidence that the grievor, by virtue of his years of experience, had some ". . . knowledge of the impact that ISP/EI benefits, private insurance and company pensions have on each other" (item 8), I was not satisfied that the evidence went so far as to establish that either the grievor in particular was, or all CSSs in general were, expected to have such knowledge. Indeed, it struck me as unlikely. Given the sheer number of private insurance and private pension plans in existence, it would be difficult if not impossible to expect a position charged with delivering basic and general information respecting the employer's programs to have the time, ability or expertise to analyze issues arising

from the interaction of particular private plans with those programs. The fact that the grievor, because of his experience, might be able to answer such questions from time to time with respect to some private plans does not mean that he was expected to or that the job description was inaccurate because he could.

[73] Item 9 (dealing with the delivery of information sessions and training) is listed under "effort" but is really simply a key activity that is already provided for and described as such in the job description. There was no evidence to support a conclusion that the grievor — let alone the CSSs in general — was required to analyze cases and to determine what intervention was required (item 10). The physical effort of carrying out day-to-day duties, such as working at a computer, attending meetings and making presentations (item 11), is already contained in the job description. One cannot provide tailored or bundled information (listed under the key activities of the job description) without working at a computer or attending a meeting. And finally, with respect to item 13 (interviewing clients in a variety of surroundings), there was no evidence to support that any such interviews were anything other than sporadic one-off events. Moreover, and in any event, it seems to me that providing information to a client who cannot attend a seminar because he or she is ill or institutionalized is simply an instance of the delivery of "presentations to . . . the public" that is already listed under the key activities.

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

(The Order appears on the next page)

IX. Order

[75] The grievance in PSLRB File No. 566-02-6355 is dismissed.

February 10, 2014.

Augustus Richardson,
adjudicator