

**Date:** 20160201

**File:** 566-02-3095

**Citation:** 2016 PSLREB 07



*Public Service Labour Relations Act*

Before an adjudicator

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BETWEEN

**KEITH JEFFERY DUFFIELD**

Grievor

and

**TREASURY BOARD**  
**(Department of Employment and Social Development)**

Employer

Indexed as

*Duffield v. Treasury Board (Department of Employment and Social Development)*

In the matter of an individual grievance referred to adjudication

**Before:** Deborah M. Howes, adjudicator

**For the Grievor:** Ray Domeij, grievance and adjudication officer

**For the Employer:** Bruce Hughson, counsel, and Philip LaCasse

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Heard at Edmonton, Alberta,  
February 26 and 27, March 6 and May 22, 2013.

## REASONS FOR DECISION

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### **I. Individual grievance referred to adjudication**

[1] This decision deals with a grievance filed by Keith Jeffery Duffield (“the grievor”) in which he grieved that he was not provided with a complete and current statement of his duties and responsibilities under article 54 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services group with the expiry date of June 20, 2007 (“the collective agreement”). He claimed his work description and reporting relationship shown on the relevant organization chart was not accurate for over two years.

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the new Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 396 of the *Economic Action Plan 2013 Act, No. 2*, an adjudicator seized of a grievance before November 1, 2014, continues to exercise the powers set out in the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) as that Act read immediately before that day.

[3] On January 11, 2007, the Department of Employment and Social Development, formerly Human Resources and Skills Development Canada (“HRSDC” or “the employer”) allowed the grievance at the first level of the grievance procedure. HRSDC agreed to review and update the grievor’s then-current work description. Thirteen months later, HRSDC gave him a revised job description (“the revised job description”), which he said was not complete.

[4] The sole question between the parties is: Did HRSDC give the grievor a complete and current statement of his duties and responsibilities under article 54 of the collective agreement?

[5] I find HRSDC did give the grievor a work description as required under article 54. As a result, I dismiss the grievance for the reasons that follow later in this decision.

## **II. Summary of the evidence**

[6] The factual scenario was provided by the grievor; his manager, Mike Balfour, regional manager, administration operations; and his manager's successor, Rod Savard, who were the only witnesses.

### **A. The first assignment in 2004**

[7] In March 2004, the grievor was working as an administration operations services clerk in Materials Management at the CR-04 group and level. Mr. Balfour offered him a deployment to work with Wally Bawol, regional emergency measures and security officer, in Security, because Mr. Bawol needed support in his role.

[8] Mr. Balfour first met the grievor in February 2001 when the grievor was working as one of a pool of employees providing support services for six business lines. The grievor performed a variety of duties at the CR-04 level, including materials management and warehousing.

[9] Mr. Balfour met with Mr. Bawol and the grievor to convey his expectations for the deployment. Mr. Balfour told them there was no national job description for the grievor's new role, but he was trying to mirror the security support role that existed in other regions. Working with the common services administrative support clerk job description, the three pulled out areas from it in which the grievor could assist Mr. Bawol, which became the duties of the assignment. Mr. Balfour confirmed they could make no changes to the job description without his approval. Mr. Bawol was to report monthly to Mr. Balfour as a way of assessing the assignment's success.

[10] On April 1, 2004, the grievor reported to work with Mr. Bawol. The grievor received direction and a performance assessment from Mr. Bawol, who reported to Mr. Balfour or his successor, Mr. Savard.

[11] For six months, things proceeded smoothly. Then, Mr. Balfour said, things began "to slide". He was not aware of the changes the grievor and Mr. Bawol were making to the work duties. He began to receive complaints and concerns from other directors about the grievor doing some duties or making comments that were part of Mr. Bawol's role. He followed up with both of them to remind them of the agreed-to tasks.

**B. The draft job description**

[12] Mr. Bawol and the grievor began to prepare the draft job description for the grievor's duties, with a view to having the job classified differently ("the draft job description" or, from "Personnel Security", "the PERSEC description"). The draft job description titled the job "Personnel Security Administrator (PERSEC)", effective from April 1, 2004.

[13] Any change to the grievor's classification would have had a consequential impact on Mr. Bawol's classification, who was a security officer and who had no prior supervisory duties. However, with the grievor reporting to him, opportunities arose to improve his classification, particularly if he was supervising someone in a security officer classification.

[14] On November 15, 2004, Mr. Bawol forwarded the draft job description to Mr. Balfour. The attached email expressed Mr. Bawol's view that the description was a good representation of the position's duties, responsibilities, and functions. Mr. Bawol invited Mr. Balfour to discuss it with him; if not, he stated that he would assume Mr. Balfour concurred. From that date forward, the grievor considered the draft job description his actual job description.

[15] Mr. Balfour was aware that all staff desired classification reviews around that time. The grievor's was one of the first job descriptions he saw.

[16] Mr. Balfour did not approve the draft job description as he felt Mr. Bawol was asking the grievor to do work that fell within Mr. Bawol's work description. He thought the terms used in the draft job description went beyond the level of work the grievor was required to perform.

[17] Mr. Balfour spoke to both Mr. Bawol and the grievor to confirm that there was no national job description for the grievor's support role and that the Management Vacancy Committee would require a formal process, approval, and posting to deal with a change to a job description. He confirmed to them he was not prepared to accept a regional job description when the regions were looking into a national job description for the support role. He told them that he was not prepared to move forward on the draft job description and that they had to continue with the approved common services administrative support clerk job description.

[18] Mr. Balfour acknowledged the grievor was a strong performer in his role, with initiative and broad experience. He was able to carry out a wide variety of tasks as a result of his experience. He was willing to take on new tasks and sometimes had to be constrained in his enthusiasm.

[19] On February 22, 2005, the grievor was offered and accepted an acting position as a common services administrative support clerk at the CR-04 group and level, in Finance and Administrative Services. Essentially, it was driven by a reorganization, but it was the same job he had been performing since April 2004.

[20] On March 4, 2005, the grievor wrote to Mr. Balfour and Mr. Bawol to accept the position. He pointed out he did not feel the position description reflected his current PERSEC duties or reporting relationship set out in the draft job description. He asked them to correct the job description and organization chart by June 2015.

[21] Mr. Balfour immediately contacted the grievor to arrange to discuss his email the following week. Mr. Balfour again informed the grievor that he would not pursue a reclassification of the grievor's position because the security duties were assigned to Mr. Bawol, and there was still no progress on a national job description for the security officer support duties role.

### **C. Formal request for a job description**

[22] On September 6, 2005, the grievor made a written request under article 54 to Sandra Kadey, human resources consultant, for a current statement of his PERSEC duties. She informed him that she had not received a request to classify a position for him in security and that he was still under the common services administrative generic work description. She informed him that his supervisor, through his manager, would need to submit an updated work description with a request to review it for classification purposes but that all positions had to be reviewed by the Management Vacancy Committee for approval before they could be classified.

[23] The grievor asked her to continue with his request based on his current position and stated that Mr. Bawol would follow up on the PERSEC position with Mr. Balfour.

[24] On September 7, 2005, Ms. Kadey provided the grievor with his current work description for the common services administrative support clerk position and the point rating.

[25] On September 20, 2005, the grievor requested a copy of the organization chart for his position; it was sent the same day.

[26] Mr. Balfour told the grievor and Mr. Bawol that he was not happy with the grievor contacting Human Resources and that he was not to deal with Human Resources on the classification matter any longer. The grievor was to deal with his manager, not Human Resources.

[27] From this information, I find the grievor should have been on notice that Mr. Balfour had not approved his draft job description, and he should have contacted Mr. Balfour about the next steps. Instead, the grievor continued to deal with Mr. Bawol and Human Resources.

[28] Shortly after that, Mr. Balfour moved to another job, and Mr. Savard became the regional manager.

#### **D. The grievance**

[29] On November 29, 2006, the grievor filed his grievance. Mr. Bawol had just retired on that day, and Mr. Savard took on the regional emergency measures and security officer role in the interim. Mark Brass eventually became the regional emergency measures and security officer.

[30] Mr. Savard was not aware that the grievor was performing any duties outside the CR-04 level and did not authorize him to perform any such duties. He asked the grievor to continue his role while Mr. Bawol was being replaced. He denied ever telling the grievor to continue with the “status quo”, meaning for him to continue performing the PERSEC duties. Mr. Brass also told the grievor to stop attempting to do security officer duties.

[31] The grievor did not apply to the security officer posting.

[32] On January 11, 2007, Mr. Savard granted the grievance in part because the job description was dated 2003. He did not agree that the PERSEC job description would be used as a model. He eventually approved the revised job description for a business services support clerk.

### **III. Summary of the arguments**

#### **A. For the grievor**

[33] The grievor argued that clause 54.01 of the collective agreement required the employer to provide him with a complete and current statement of his duties. Those duties should have included duties assigned to him by management, either through his supervisor or directly by a manager. He said he performed a range of duties that exceeded his outdated job description.

[34] He said he requested an updated job description and even provided the draft job description, containing what he and his supervisor thought he was doing at the time. His request was not actioned until he filed his grievance. The remedy he requested in it was as follows: “The employer ensure [sic] that all aspects of the work being evaluated are visible in the work description. The PERSEC description be [sic] used as a model.”

[35] The grievance covered April 1, 2004 to December 14, 2006. In December 2006, his manager specifically told him to cease doing some of the duties he said had been performing for almost two years.

[36] He argued HRSDC had to have known or was willfully blind to the fact that he was performing additional duties at the time, which were assigned by his direct supervisor, Mr. Bawol. He spoke regularly to Mr. Balfour, who should have known. The grievor completed regular reports for Mr. Balfour, who also received feedback about some of his duties.

[37] On January 11, 2007, at the first level of the grievance procedure, the grievor’s grievance was granted, but no one contacted him after that to update his job description. Thirteen months after filing his grievance, he received the revised job description, which he said was still not accurate or a complete description of his security functions. He argued that the level of detail in the job description was inadequate and that the terminology was improper.

[38] He wanted HRSDC to provide him a complete and current job description of his duties and responsibilities and complete a proper evaluation of his duties as they existed at that time.

[39] The grievor relied on the following four cases to support his position: *Thom v. Treasury Board (Department of Fisheries and Oceans)*, 2012 PSLRB 34; *McKay v. Treasury Board (Correctional Service of Canada)*, 2007 PSLRB 17; *Cushnie v. Canada Revenue Agency*, 2007 PSLRB 96; and *Manuel and Reid v. Treasury Board (Department of Transport)*, 2012 PSLRB 9.

**B. For HRSDC**

[40] HRSDC said it granted the grievance to the extent shown on the grievance reply. The reply read in part as follows:

...

*I have determined that your current work description is out dated and needs to be updated to reflect the current duties of your position.*

*Therefore, your grievance has been allowed and the corrective action you seek will be granted to the extent that a review and updated [sic] will be conducted on your current work description.*

[41] HRSDC argued the first-level response to the grievance (allowing it) and the revised job description provided to the grievor are a complete answer to the grievance.

[42] The revised job description captured what the employer expected the grievor to do, which was not necessarily all the duties the supervisor assigned to him. A job description should contain what management expects an employee to do (and thus knows about) rather than everything the employee does.

[43] The employer argued that I should determine whether the grievor was required to perform the duties and responsibilities he claimed were not set out in the job description. If I find that he was, I need to determine whether the revised job description reflects those additional duties and responsibilities and meets the obligation in the collective agreement.

[44] The employer argued that the grievor bore the onus of proving both points on a balance of probabilities and that I should scrutinize the evidence to ensure there is clear, convincing, and cogent evidence in support of each point.



[45] The employer said that the grievor's supervisor tasked him with duties that the supervisor should have performed. The grievor should not have been able to benefit from another employee failing to perform duties within his or her job description.

[46] When the grievor and his supervisor prepared the draft job description, the grievor knew his supervisor did not have the authority to approve it, and he was also aware that the Management Vacancy Review Committee was mandated to review every unique job description and every vacancy. He knew that if his draft job description had been approved, it would have resulted in a posting for the position. The grievor was never informed that the draft job description was approved, and no posting occurred.

[47] In April 2005, the grievor raised concerns about some duties but acknowledged that he was never told to perform some of the duties he claims were part of his job. As a result, he should have known the employer did not expect him to carry out the duties he was seeking to.

[48] In the end, the employer said it met its obligation under the collective agreement and asked that I dismiss the grievance.

[49] In support of its argument, the employer relied on the following eight cases: *Rondeau v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File No. 166-02-27295 (19970220); [1997] C.P.S.S.R.B. No. 17 (QL); *F.H. v. McDougall*, 2008 SCC 53; *Batiot et al. v. Canada Customs and Revenue Agency*, 2005 PSLRB 114; *Fedun et al. v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File No. 166-02-28278 to 28288 (19980611); [1998] C.P.S.S.R.B. No. 49 (QL); *Jaremy v. Treasury Board (Revenu [sic] Canada - Customs, Excise & Taxation)*, 2000 PSSRB 59; *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69; *Kerswill v. Treasury Board (Natural Resources Canada)*, 2000 PSSRB 91; and *Barnes v. Canada Customs and Revenue Agency*, 2003 PSSRB 13.

#### **IV. Reasons**

##### **A. Did the grievor receive a complete and current statement of his duties and responsibilities?**

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[50] Clause 54.01 of the collective agreement has straightforward obligations. The employee must request a current statement of duties in writing. The employer shall then provide a complete and current statement of the duties and responsibilities of the

employee's position. The employer must include the classification level; if applicable, the point rating; and an organization chart showing the position in the organization. The clause reads 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 allocated by factor to his or her position, and an organization chart depicting the position's place in the organization.*

[51] The grievor had the burden of proving that his job description is not a complete and current statement of his duties and responsibilities. This principle was set out in *Fedun*.

[52] To answer that question, this decision focuses on two more detailed questions:

- a. Was the grievor authorized to perform the duties and responsibilities in the draft job description, which should then have been included in the revised job description?
- b. If so, did HRSDC provide the grievor with a current, compliant work description that reflected his duties and responsibilities?

**1. Was the grievor authorized to perform the duties and responsibilities in the draft job description, which should then have been included in the revised job description?**

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[53] The grievor claimed he was authorized to perform security-related duties that should be included in his job description.

[54] From the case law, the grievor had the burden of proving the employer required him to perform duties not contained in his job description (see *Rondeau*, at 16; and *Kerswill*, at 3).

**a. Documentary support for verbal recollections of the authorization**

[55] The grievor and Mr. Balfour gave opposing verbal recollections of the authorization. The parties also provided a limited number of reports and emails to prove whether or not the grievor was doing the duties in his draft job description. I used the documents to determine which of the verbal recollections was probable. I find

the documents support Mr. Balfour's evidence that the grievor was not authorized to perform the security and other additional duties that he claims were assigned to him in the draft job description.

[56] One example was the grievor's 2004-2005 "Personal Learning Plan". He argued that his plan was evidence of management's acknowledgement of his broader range of duties. In addition, his manager's approval to attend a course set out in his learning plan was also evidence of the acknowledgement of his additional security duties. He said that had he not been authorized to perform the duties, his supervisor and manager would not have signed off on his learning plan, and he would not have been approved to attend some of the training he attended, such as the security screening training.

[57] One of his learning plan goals was to maintain and apply the required skills and expertise for his functional position, to enable him to effectively apply direction and give support to other team members or clients. This goal supports a finding that he was performing a supportive administrative role, not a security role.

[58] Three of his learning plan goals related to career growth. He wanted to acquire knowledge, accreditation, or skills in the functional area of administrative operations, generally by taking courses on security screening and on other topics. He wanted to develop future knowledge, accreditation, or skills in other functional areas of administrative operations so he could do tasks like facilitating planning and information sessions for clients. He wanted to acquire knowledge, accreditation, or skills in functional areas outside HRSDC so he could sit on committees and recommend procedures to meet client needs. His final goal was to maintain future accreditation skills in current HRSDC functional areas, such as maintaining his first-aid/CPR certification and taking on acting or developmental assignments.

[59] I find the Personal Learning Plan is a plan for learning and growth, not evidence of authorization for assigned duties. It is not a substitute for a job description and cannot be seen to provide authorization to add or change duties without the appropriate processes being completed.

[60] The initiative the grievor showed in his learning plan mirrors Mr. Balfour's verbal evidence. The grievor's three career growth goals addressed tasks that he and Mr. Bawol had included in the draft job description and reflected their mutual plan to

have the grievor take on more duties from Mr. Bawol. However, neither the learning plan goals nor the subsequent approval to take a course that it proposed prove that HRSDC authorized the grievor to perform any of the tasks he aspired to perform.

[61] A second example was an emailed report in May 2005 concerning a “DSB secure fax”. I find this report does not assist the grievor. The grievor sent it to Mr. Bawol, his supervisor, and copied Mr. Balfour, whose response gives directions to Mr. Bawol to action steps, not the grievor. The duties were for the supervisor, not the grievor.

[62] Another example was a personnel security report from June 2005, which the grievor emailed to Mr. Balfour. The grievor said this report demonstrated Mr. Balfour knew and accepted that he was reporting on the work and was doing the work summarized in the report. Mr. Balfour disagreed, saying he understood the grievor’s email to be a report from both Mr. Bawol and the grievor because the security tasks were assigned to Mr. Bawol and the administrative tasks were assigned to the grievor. Mr. Balfour understood that the report was jointly prepared, and then Mr. Bawol gave a narrative update.

[63] Again, I find this report does not clearly and cogently prove the grievor was authorized to perform the tasks he asserted that he performed. It does not say who completed the tasks or the level of work involved in them. The general descriptions could refer to either administrative tasks or higher-level tasks, depending on the unwritten context.

[64] The exception is the tasks under the heading “Additional Notes”, which lists one group of tasks similar to those the grievor asserted were his new tasks. The note states, “BCP reviews and uploads to process, pending secure fax issues, meetings, training, security and front-end coverage, leave, special projects and resulting workloads, as Wally previously directed.” At best, again, this shows that Mr. Bawol was attempting to offload tasks to the grievor. However, it does not establish the extent of the work assigned to or the authority or approval for the grievor to do the work.

[65] A fourth example was the grievor’s 2008 application for a PM-04 regional emergency measures and security officer position with HRSDC. In his cover letter, the grievor explains his experience. Specifically about the PERSEC role he told me he performed, in his letter, he said, “I was back-up [*sic*] to the last substantive REMSO [Mr. Bawol, who had since retired], as directed when he was on travel or leave.” In his

attached resume, the grievor wrote that from March 2005 to the present, he was the personnel security officer (deployment/substantive) under the responsibility of the regional emergency measures and security officer. He stated that his job description and statement of qualification for PERSEC were available on request and that the position was under classification review. He also wrote that from April 2004 to March 2005, he was the common services clerk, personnel security (assignment), and again said that the same PERSEC job description could be provided.

[66] I find the application is also not proof of authorization to perform additional duties. However, it is further evidence that the grievor was still holding on to his view that the PERSEC job description was accurate.

[67] I find the grievor has been unable to prove that he was authorized to perform the duties he claims should be in his job description. The evidence from both his managers is that he was never asked or authorized to perform such tasks. The tasks he was authorized to perform were at the administrative support level, not at a higher level. This means there were no security duties to add to the revised job description.

## **2. Did HRSDC provide the grievor with a current, compliant work description that reflected his duties and responsibilities?**

[68] The grievor was concerned with the lack of detail in his revised job description and that it did not include specific items, such as his volunteer activities.

[69] From the cases provided by the parties, I adopt the following principles that I apply to this case:

- (a) Job descriptions, including those intended to be applicable to a number of positions across the country, may be written in fairly broad language (see *Fedun*, at 12, referring to *Taylor v. Treasury Board (Revenue Canada - Customs & Excise)*, PSSRB File No. 166-02-23096 (19901221); [1990] C.P.S.S.R.B. No. 223 (QL)).
- (b) The statement of duties need not spell out in infinite detail every possible variation, combination, or permutation of how a function is performed (see *Fedun*, at 12, referring to *Taylor, Jeremy*, at 7; and *Hughes*, at 4).

- (c) 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*. A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement (see *Thom*, at para. 85).
- (d) The statement of duties and responsibilities may not omit information because it is performed only occasionally (see *Thom*, at para. 86).
- (e) 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 *Thom*, at para. 85, citing *Jarvis v. Treasury Board (Industry Canada)*, 2001 PSSRB 84, at para. 95).

[70] I find the revised job description complies with those principles. It is a broad description of the duties and responsibilities assigned to the grievor. It is sufficiently worded to encompass all the authorized duties he felt were missing and does not omit duties he was required to perform. It is sufficiently detailed to apply to his job.

[71] As for the grievor's volunteer activities, such as the fire marshal role, the job description need not include them because they are volunteer activities, not activities he is required to perform or is evaluated on.

[72] For those reasons, I find the revised job description meets the requirements of article 54.

[73] In summary, the grievor has been unable to prove that he was authorized to perform additional duties, and I find that the revised job description accurately reflects the duties and responsibilities assigned to him. HRSDC has complied with article 54 of the collective agreement.

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

*(The Order appears on the next page)*

**V. Order**

[75] The grievance is dismissed.

February 1, 2016.

**Deborah M. Howes,  
adjudicator**