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Files: 149-34-232
166-34-30642
to 30646
166-34-31075
to 31077
166-34-31097

Citation: 2002 PSSRB 72



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MATTHEW EDWARDS

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer

Before: [Guy Giguère, Deputy Chairperson](#)

For the Grievor: Michael Tynes, [Public Service Alliance of Canada](#)

For the Employer: Harvey A. Newman, [Counsel](#)

Heard at St. John's, Newfoundland,
May 14, 2002.

DECISION

[1] Matthew Edwards is a Collections Contact Officer (PM-01) at the St. John's Tax Services Office in Newfoundland. Mr. Edwards was previously a teacher with Indian and Northern Affairs Canada (INAC) in Thunder Bay, classified at the ED-EST-01 level. As his position was declared surplus, he accepted a lower level position with Revenue Canada, now the Canada Customs and Revenue Agency (CCRA) at the PM-01 level, with salary protection at his former position's rate of pay. Mr. Edwards filed nine grievances on May 18 and 19, 1999, complaining that he is not receiving the appropriate pay.

[2] These grievances were denied by the employer as being untimely. The employer explained in its replies in the grievance process that, had the grievances not been untimely, they would still have been denied as all of Mr. Edwards' terms and conditions of employment have been correctly and fully applied. The employer indicated that Mr. Edwards received all of the economic increases that were accorded to the ED-EST group; however, he was not entitled to the "teaching experience" increment in the ED-EST salary grid as he did not meet the requirement of the collective agreement which is based on "teaching experience years".

[3] These grievances were referred to adjudication on May 28, 2001, January 15, 2002 and January 29, 2002 by Anne Clark-McMunagle, of the Public Service Alliance of Canada, who also applied for an extension of time pursuant to section 63 of the *P.S.S.R.B. Regulations and Rules of Procedure, 1993*.

[4] At the outset of the hearing, Mr. Tynes, on behalf of the grievor, withdrew the following five grievances: Board files 166-34-30642; 30643; 30644; 30645 and 30646. As for the four remaining grievances, in view of the employer's objection to the timeliness of the grievances, the grievor and the employer agreed that, if I was to rule in favour of the grievor on the four remaining grievances, any change to his rate of pay would only take effect 25 days prior to the filing of these grievances. Therefore, the application for an extension of time (Board file 149-34-232) has been withdrawn in view of the agreement of both parties.

[5] As well, for grievance bearing Board file number 166-34-31097, concerning increments that Mr. Edwards did not receive based on his years of teaching experience, the parties agreed that if it is ruled that Mr. Edwards is entitled to increments based on his years of teaching experience as of September 1, 1999, he would be entitled to receive the increment on September 1, 2000.

[6] Both representatives presented me with an agreed statement of facts and a book of evidence to be introduced at this hearing. No witnesses were called to testify.

Evidence

[7] On September 11, 1991, the grievor commenced his employment with INAC as a teacher (ED-EST-01, level 5), in Thunder Bay, Ontario. The grievor received his last increment as a ED-EST-01 on September 1, 1993 for the 1992-93 school year.

[8] On January 10, 1994, the grievor's position was declared surplus with INAC. The grievor's surplus status included salary protection and, at that time, he was earning \$36,459 per year on a 10-month pay plan. He received on that date a letter signed by Lori Ransom, Acting Director, Human Resources, Ontario Region, stating the following:

As discussed with you, because of the discontinuance of your function, your position IAN 24982 ED EST 01, Teacher, Webequie Day School, Thunder Bay, Ontario, will become redundant on the close of business on August 31, 1994. Because of the redundancy of your position, you are being placed on surplus status as of February 1, 1994.

In accordance with the Workforce Adjustment Directive (attached), the Department will make every effort to find you another position for which you are qualified or could be qualified with retraining. In addition, the Public Service Commission (PSC) will be informed of your surplus status in order that your name may be placed on their priority list. In this way, you will be given priority consideration for positions which, in the opinion of the PSC, you are qualified or could become qualified with retraining not only within the Department but across the Public Service as a whole. You should be advised that during your surplus period, you may be assigned temporarily to another branch or directorate.

If you are appointed from surplus priority to a lower level position, you are entitled:

- a) to be considered for re-appointment to a position at the group and level from which you were declared surplus; and*
- b) to continue to receive all pay entitlements provided by the collective agreement or by the terms and conditions of employment applicable to the position from which you were declared surplus. This will continue until such time as,*

- a) *you are appointed to a position at your former level, or*
- b) *you refuse an offer of a position at your former level.*

...

[9] On March 13, 1994, the grievor opted to be retrained and asked to be considered for employment in Newfoundland or in the Atlantic Provinces in Eastern Canada.

[10] On June 10, 1994, the grievor's surplus priority was extended to September 30, 1994. On June 13, 1994, the grievor was seconded to the CCRA at the PM-01 level as a customs inspector in Thunder Bay, Ontario, for a period ending on September 16, 1994. The secondment agreement provided for a customs inspector recruitment training program at the Revenue Canada College in Rigaud, Quebec. It was understood that upon successful completion of this 14-week training program, Mr. Edwards would be appointed indeterminately to the position of customs inspector at the PM-01 level. During the secondment, Mr. Edwards was to receive salary payments from INAC.

[11] On June 15, 1994, the Treasury Board announced a freeze of increments for all employees of the Public Service for a two-year period.

[12] On September 26, 1994, the CCRA offered Mr. Edwards an indeterminate appointment to the position of customs inspector in Gander, Newfoundland. The offer specified that:

...

In accordance with the Workforce Adjustment Policy, your salary as an ED-EST-01 will be protected indefinitely or until such time as you cease employment, vacate the above-noted position, or refuse a reasonable job offer at your former group and level.

...

Your employment will be governed by the relevant collective agreement....

[13] Mr. Edwards accepted the offer on September 27, 1994. Further to his appointment to the PM-01 level, the Public Service Commission (PSC) wrote to him on October 7, 1994. In this letter, the PSC informed him that:

...

...You will receive salary protection at your existing ED-EST-01 rate of pay, for an indeterminate period from the date of this appointment...

...Because you have been appointed to a position with a lower rate of pay, you are now entitled to a regulatory priority for reinstatement to your previous and/or equivalent group and level...

...

[14] On September 17, 1995, Mr. Edwards requested a deployment to St. John's, Newfoundland, to a position equivalent to his current position in Gander. On October 11, 1995, Mr. Edwards' position in Gander as a customs inspector at the PM-01 level was declared surplus. However, on that same date, he was offered, by letter, a position as a collections contact officer in the St. John's Tax Services Office. In this letter it was indicated:

As a result of your surplus status with Customs Border Services, Gander, I am pleased to offer you the position of Collections Contact Officer, St. John's Tax Services Office. The tenure of this appointment is for an indeterminate period and your rate of pay will remain unchanged. Salary protection will continue to apply as provided for under the Work Force Adjustment Directive until you cease employment, vacate the above-noted position or refuse a reasonable job offer at or equivalent to your former group and level (ED EST 01)...

[15] On April 30, 1996, Mr. Edwards was informed that the effective date of his appointment as a collections contact officer (PM-01) in the St. John's Tax Services Office was June 24, 1996.

[16] Effective June 15, 1996, it was announced that the Government was lifting the increment freeze imposed on public servants.

[17] On March 30, 1999, Mr. Edwards wrote to Dorothy Burrige, the pay clerk responsible for his file, to officially request that his pay as a salary protected ED-EST-01 be adjusted from his current annual salary of \$36,459 per year to reflect the annual increment from his last year as a teacher with INAC.

[18] In May of 1999, Mr. Edwards filed the instant grievances.

Arguments

For the Grievor

[19] Mr. Tynes submitted that the words “all pay entitlements provided by the collective agreement” in the employer’s letter of January 10, 1994 should be interpreted to include all increments applicable to the grievor.

[20] Mr. Edwards accepted the position at the PM-01 level on the understanding that he would not forego pay entitlements as set out in the collective agreement. Under Pay Note 16(a) for the ED-EST group collective agreement between the Treasury Board and the Public Service Alliance of Canada (Codes: 209/98 and 215/98), the only requirement to receive an annual increment is to be on duty; teaching is not a requirement that is specified. Pay Note 16(a) reads as follows:

16. *Changes in Rates of Pay After Appointment*
 - (a) *After appointment, an employee on a school year will be granted annual increments on September 1 of each year provided the employee has been on duty at least six (6) months since the last increment or since appointment and has given satisfactory service.*

...

[21] According to the Treasury Board Personnel Management Manual, under “Work force adjustment”, at subsection 4.1, Mr. Edwards’ salary in the ED-EST group should have been protected and the maximum salary under that collective agreement should have been the maximum salary attainable for Mr. Edwards. Subsection 4.1.2 of the Manual states:

4.1.2 Entitlements

An employee who is appointed to a position with a lower attainable maximum rate of pay shall retain the rate of pay of the former position as adjusted to reflect salary increments and revisions.

However, for all other purposes, the employee is subject to the terms and conditions of employment applicable to the lower-level position.

[22] Mr. Tynes explained that by being appointed to a position at the PM-01 level in his home province, the grievor was treated fairly by the employer. However, the employer's narrow interpretation of the collective agreement denies Mr. Edwards an annual increment, to which he is entitled. This interpretation greatly affects his salary and pension.

[23] In addition, Mr. Tynes submitted that, as a teacher, Mr. Edwards was on a 10-month pay plan, having to work only 10 months, which is the normal school year in Ontario for elementary and secondary school students. When he was appointed to the position at the PM-01 level, he started working on a 12-month basis. Under the collective agreement, Annex "A1-1" [(III) ELEMENTARY AND SECONDARY TEACHING SUB-GROUP (ED-EST) GUIDANCE AND VOCATIONAL COUNSELLOR ANNUAL RATES OF PAY], considered on a 12-month pay plan for Ontario, at level 5, with three years experience, Mr. Edwards should have received an annual salary of \$39,685. Mr. Tynes submitted alternatively that this should be the basis to calculate Mr. Edwards' yearly increment.

For the Employer

[24] Mr. Newman explained that the employer's position is that an employee has to have experience as a teacher to move to new pay increments provided for in the collective agreement. Mr. Newman submitted that Pay Note 1 for the ED-EST group is very significant as it specifies that an employee's rate of pay on the pay grid for the appropriate region is determined by his or her education and experience. Pay Note 1 for the ED-EST group reads as follows:

1. An employee is entitled to be paid at the rate of pay on the pay grid for the appropriate region set forth in Annex "A1" or "A1-1" as determined by his or her education and experience. ...

[25] Mr. Newman added that in the Annex, over the column for experience, the word “teaching” is written, clearly making teaching a requirement. Mr. Newman explained that if an employee takes an assignment at headquarters, the period of this assignment would not be recognized as teaching experience. As well, if an employee is on leave to pursue further studies, this could change his or her level; however, the years of experience will remain the same. The same situation would apply for an employee on parental or sick leave. The employer treated Mr. Edwards exactly as he should have been treated under the collective agreement.

[26] As for Mr. Tynes’ argument that Mr. Edwards should have been paid according to the collective agreement on a 12-month pay plan when he started his employment as a PM-01, this cannot apply since the hours of work were determined by the PM group collective agreement. Nevertheless, under the collective agreement, as an ED-EST-01, Mr. Edwards could not go on a 12-month pay plan as the collective agreement and the Annex provide that a 12-month pay plan is for vocational or guidance counsellors only.

Reasons for Decision

[27] Both parties agree that when Mr. Edwards’ position was declared surplus on January 10, 1994 this entitled him to salary protection under the Workforce Adjustment Directive. This salary protection meant that Mr. Edwards would *continue to receive all pay entitlements provided by the collective agreement* as specified in the letter of the employer dated January 10, 1994. Therefore, the question that has to be determined is whether, under the collective agreement Mr. Edwards is entitled, as an ED-EST-01, to receive the experience increment even if he is not teaching.

[28] Mr. Tynes argued that under Pay Note 16(a) the only requirement for Mr. Edwards was that he be on duty and give satisfactory service to be entitled to all annual increments.

[29] Mr. Newman argued that Pay Note 1 sets out the rates of pay on the pay grid according to the region, education and experience as set forth in the Annex. As well, over the experience column, the word “teaching” is clearly indicated in the Annex making teaching experience a requirement for moving on in the pay grid. Therefore, an employee has to have teaching experience to receive this increment. Without this teaching experience, the employee will receive only the economic increase.

[30] As Professor Palmer explained in his book *Collective Agreement Arbitration in Canada*, Third Edition (Butterworths), at page 123, a collective agreement should be read as a whole. Professor Palmer writes, at 4.14:

B. THE COLLECTIVE AGREEMENT TO BE READ AS A WHOLE

4.14 It is widely accepted by arbitrators that the collective agreement is to be considered as a whole. Therefore, words and provisions must be interpreted in light of the entire agreement. As a result:

It is elementary that all the terms of the agreement must be read together and that any board of arbitration should be highly skeptical of an interpretation of one article which would nullify or render absurd the effect of another article.

[31] Therefore, taking into consideration the collective agreement as a whole, Pay Note 16 and Pay Note 1, as well as the Annex, have to be read together to determine entitlement to the annual experience increment. It is not only necessary to be on duty, as pay Note 1 specifies that an employee's rate of pay will be determined by his or her region of work, education and experience. Experience is further specified as "teaching experience" in the Annex of the collective agreement. As Mr. Edwards has not been teaching since he started working as a PM-01, these years of service cannot be counted as years of teaching experience. Therefore he is not entitled to any increments on that basis for those periods.

[32] For all these reasons, the grievances are dismissed.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, August 9, 2002.