Files: 166-2-26603
166-2-26604

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

JEAN-PIERRE LACHANCE AND MICHAEL PALMER

Grievors

and

TREASURY BOARD
(National Defence)

Employer

Before: Richard Labelle, Board Member

For the Grievors: Denis Cardinal, Professional Institute of the Public Service of Canada

For the Employer: Harvey Newman, Counsel

Heard at Ottawa, Ontario,
October 26, 1995.

This decision is in connection with two individual grievances, similar in nature, referred to adjudication by Messrs. Jean-Pierre Lachance and Michael Palmer following the employer's decision not to recognize the grievors' previous Canadian Armed Forces service for the purpose of calculating their vacation leave credits.

Both grievors testified on their own behalf. Four witnesses testified for the employer: Mrs. Fleurette Labrèche, Mr. Jean-Marc Vachon, Mrs. Sandra Preston and Mr. Guy Cloutier.

Evidence

The grievors' representative tabled a Statement of Facts which had been agreed upon by the parties (Exhibit G-1). It reads as follows:

BETWEEN

JEAN-PIERRE LACHANCE
MICHAEL PALMER
THE PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

AND

TREASURY BOARD
(DEPARTMENT OF NATIONAL DEFENCE)

AGREED STATEMENT OF FACTS

The parties agree on the following facts for the purpose of the adjudication hearing on the instant References:

1. At all material times, the Grievors, J.-P. Lachance and M. Palmer, were members of the EN bargaining unit, and were covered by the EN collective agreement (210/91) signed on September 13, 1991 by the Treasury Board and the Professional Institute of the Public Service of Canada (PIPSC).

2. In their grievances dated July 15 and July 12, 1994, the Grievors seek to count their service in the Canadian Forces (CF) for the purpose of vacation leave entitlements under Article 21 of the agreement.

3. Mr. Lachance was appointed to the Public Service on April 27, 1993, and immediately prior to this had served in the CF, for these purposes since August 1, 1979.

4. Mr. Palmer was appointed to the Public Service (in Transport Canada) on October 15, 1992, and was promoted

to a position in the Department of National Defence on September 20, 1993. Immediately prior to his initial appointment, he had served in the CF since August 22, 1976.

5. Both employees were honourably released from the CF, were appointed on an indeterminate basis in the Public Service, and made valid elections to transfer their CF Superannuation contributions for pensionable service under the PS Superannuation Act.

6. Prior to the applicable EN collective agreement (210/91) signed in 1991, the Department allowed EN employees to count prior CF service for the purpose of vacation leave, under Treasury Board Minute 743882 (attached).

7. In the negotiations leading to the signing of the applicable agreement (210/91), clause 21.03 was not amended, but the Treasury Board negotiator gave notice to the PIPSC negotiator that the term "service" would in future be applied as service in the Public Service as defined in the PSSRA.

8. The following documents are admitted into evidence:

(a) Letters of offer to Messrs. Lachance and Palmer (3),
(b) Report of Previous Service for Mr. Palmer,
(c) Treasury Board policy on "continuous employment",
(d) Treasury Board memo of May 1, 1992.

9. The parties reserve the right to introduce additional evidence.

Signed at Ottawa, October 26, 1995.

Attached to the Agreed Statement of Facts is an extract from the Public Service Terms and Conditions of Employment Regulations which contains the following provision:

Continuous employment

3. For the purpose of these regulations the following periods count as continuous employment:

(A) In respect of a person appointed to Part I Service as an indeterminate employee:

...

(iii) immediately prior service in the Canadian Armed Forces or the Royal Canadian Mounted Police, provided that the person was honourably released and

> *has made or makes a valid election to contribute for that service under the Public Service Superannuation Act (the effective date will be the date the election is completed)*
>
> *provided that these periods of service are not separated by more than three months;*

The grievors' representative also tabled Treasury Board Minute 743882, dated June 2, 1976, which contains provisions in relation to continuous employment which are similar to those set out in the Public Service Terms and Conditions of Employment Regulations (Exhibit G-2).

Grievor Jean-Pierre Lachance stated that he applied for his position in November 1992. Mr. Lachance was sent a letter of offer in December 1992, which he accepted. He started his employment in April 1993 (Exhibit G-1).

Mr. Lachance met with the Pay and Benefits clerk, Mrs. Fleurette Labrèche, and signed the necessary forms. The grievor stated that Mrs. Labrèche said there would be no problem in transferring his benefits.

The grievor then met with Mr. Jean-Marc Vachon who told him that there might be a problem in transferring his benefits (annual leave) to the Public Service. Mr. Vachon provided the grievor with a memorandum concerning the Deniger and Miller case (Board files 166-2-21583 and 21584) (Exhibit G-4). In that case, the adjudicator found that the grievors were entitled to count their prior service in the Canadian Armed Forces for the purpose of calculating their annual entitlement to vacation leave credits. In so doing, the adjudicator found that the employer was estopped from relying on the plain meaning of clause 21.03 of the predecessor to the collective agreement which is being considered in the grievances of Messrs. Lachance and Palmer.

Under cross-examination, the grievor said that he did not know if he would have turned down the job offer had he known about not being able to integrate his prior service in the Canadian Armed Forces for the purpose of calculating his annual leave credits in the Public Service.

Grievor Michael Palmer was appointed to the Public Service (Transport Canada) on October 15, 1992 and was promoted to a position at National Defence on September

20, 1993. Prior to his initial appointment, Mr. Palmer had served in the Canadian Forces since August 22, 1976.

Mr. Palmer was offered his position at Transport Canada on April 6, 1992. He contacted the Pay and Benefits clerk at Transport Canada, Mrs. Sandra Preston, to discuss salary, vacation leave, and union dues. Mr. Palmer testified that what he was told by Mrs. Preston regarding his vacation leave was satisfactory and he believed that his military service would be included in the calculation of his vacation leave credits.

The grievors' representative tabled Exhibit G-5. An objection to this document was raised by counsel for the employer. The objection was noted and the document accepted under reserve of my decision as to what weight, if any, I would give to it. It is not an official document, simply an information guide from National Defence which Mr. Palmer perused. Mr. Palmer elected to transfer his pension contributions because of question #40 of this document, thinking this situation was applicable to him (Exhibit G-1(b) - a "Report of Previous Service" record).

The grievor stated that he did not seek any further confirmation of his entitlement to include his prior military service in the calculation of his annual leave credits in the federal Public Service. He stated that Mr. Guy Cloutier at National Defence told him that his military service would be included in the calculation of his leave credits. This was in October 1993.

The grievors' representative tabled a letter dated 22 August 1994 addressed to Mr. Palmer (Exhibit G-6). Counsel for the employer raised an objection. The objection was noted and the document was accepted under reserve of my decision as to what weight, if any, I would give to it.

Under cross-examination, the grievor stated that he understood that his vacation leave would be four weeks per year and not three. He said that Mrs. Preston told him that he would be starting with three weeks vacation and that he would be credited with past service in the Canadian Armed Forces with his transfer of pension.

In redirect, the grievor stated that Mrs. Preston told him that his transfer of pension would be retroactive to his elected date of employment and that there was no doubt in his mind about receiving four weeks of annual leave.

Mrs. Fleurette Labrèche has worked for Industry Canada since May 1993. Prior to that she was the Pay and Benefits clerk at National Defence. Mrs. Labrèche stated that she met with Mr. Lachance on April 27, 1993. She asked him if he wanted to surrender his pension service and he answered yes.

Counsel for the employer tabled a document entitled: "Annual Leave Entitlements - Armed Forces and RCMP" (Exhibit E-1).

Mrs. Labrèche stated that she told Mr. Lachance that, even though he surrendered his pension, his prior military service did not count for the purpose of calculating his vacation leave entitlements in the federal Public Service.

Mr. Jean-Marc Vachon has worked for Industry Canada since October 1994. Prior to that he was at National Defence from February 1988 until October 1994. He dealt with Mr. Lachance in July 1993. He advised him about his pension transfer, adjustments to his sick leave credits, and he mentioned to Mr. Lachance that prior military service was not included in the calculation of vacation leave credits after May 31, 1990 as per the collective agreement for the engineering group.

The witness spoke to Mr. Lachance about the Deniger and Miller case (supra) (Exhibit E-2) and the document entitled "Continuous/Discontinuous Service - PIPSC Agreements" (Exhibit E-3).

Mrs. Sandra Preston testified that she met with Mr. Palmer around October 1992 and that he had concerns about accepting the terms of his letter of offer. She had no information on his service file at National Defence.

Counsel for the employer tabled a document entitled: "Vacation Leave Entitlements Based on Continuous/Discontinuous Service" (page 2) (Exhibit E-4).

Under cross-examination, the witness stated that Mr. Palmer's concerns were with the medical plan; they did not talk about annual leave.

Mr. Guy Cloutier stated that he met with Mr. Palmer on September 20, 1993 and gave him information on the pension and insurance plans. They discussed annual leave and Mr. Cloutier told Mr. Palmer that he was entitled to three weeks vacation leave per year. Mr. Palmer made a reference to other persons who had their previous

military service counted for leave purposes. Mr. Cloutier said it was a factor before but not at the time Mr. Palmer was hired.

Arguments

The representative of the grievors referred to Article 21 of the collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada for the engineering and land survey group (all employees) (Code: 210/91) concerning accumulation of vacation leave. Clause 21.01 provides:

> *21.01 Accumulation of Vacation Leave*
>
> *An employee who has earned at least ten (10) days' pay for each calendar month of a fiscal year shall earn vacation leave at the following rates:*
>
> *(a) one and one-quarter (1 1/4) days per month until the month in which the anniversary of his eighth (8th) year of service occurs;*
>
> *(b) one and two-thirds (1 2/3) days per month commencing with the month in which his eighth (8th) anniversary of service occurs;*
>
> *(c) two and one-twelfth (2 1/12) days per month commencing with the month in which his nineteenth (19th) anniversary of service occurs;*
>
> ****
>
> *(d) two and one-half (2 1/2) days per month commencing with the month in which his thirtieth (30th) anniversary of service occurs.*

Clause 21.03 reads, in part, as follows:

> *21.03 For the purpose of this Article, "service" means all periods of employment in the Public Service, whether continuous or discontinuous, ...*

Mr. Cardinal referred me as well to Article 2, Interpretation and Definitions, subclause 2.01(b), which reads as follows:

> *2.01 For the purpose of this Agreement,*
>
> *...*

> *(b) "continuous employment" has the same meaning as specified in the Public Service Terms and Conditions of Employment Regulations on July 15, 1986.*

This is included in the Agreed Statement of Facts (Exhibit G-1), Appendix A, Public Service Terms and Conditions of Employment Regulations, concerning continuous employment. Section 3.(A)(iii) of Appendix A reads as follows:

> *3. For the purpose of these regulations the following periods count as continuous employment:*
>
> *(A) In respect of a person appointed to Part I Service as an indeterminate employee:*
>
> *...*
>
> *(iii) immediately prior service in the Canadian Armed Forces or the Royal Canadian Mounted Police, provided that the person was honourably released and has made or makes a valid election to contribute for that service under the Public Service Superannuation Act (the effective date will be the date the election is completed)*
>
> *provided that these periods of service are not separated by more than three months;*

The grievors' representative stated that these three conditions have been met by both grievors. They came from the Canadian Armed Forces into the Public Service. Based on this alone, the grievances should be allowed.

He referred as well to Treasury Board Minute 743882 (Exhibit G-2) mentioned in the Agreed Statement of Facts (Exhibit G-1) and which became effective on January 1, 1976. He submitted that these terms and conditions still apply to the collective agreement.

The grievors' representative referred me to the Hough decision (Board file 166-2-25177) mentioning that in that case the grievor was appointed to a position three years after leaving the Armed Forces. In this case, the appointments came within three months after leaving. He stated that the grievors were led to believe, not promised but led to believe, that their service in the Canadian Armed Forces would count in the calculation of their vacation leave entitlements.

For his part, counsel for the employer stated that this case is virtually the same as the Deniger and Miller decision (supra), with one exception. There is no estoppel argument in this case. Counsel stated that the Deniger and Miller case related to the earlier version of the collective agreement (Code: 210/88); this case relates to the present collective agreement (Code: 210/91).

Counsel for the employer referred me to paragraph 7 of the Agreed Statement of Facts (Exhibit G-1) which reads as follows:

> *7. In the negotiations leading to the signing of the applicable agreement (210/91), clause 21.03 was not amended, but the Treasury Board negotiator gave notice to the PIPSC negotiator that the term "service" would in future be applied as service in the Public Service as defined in the PSSRA.*

Counsel also referred me to pages 16 to 19 of the Deniger and Miller decision.

Counsel for the employer stated that estoppel is now over and these grievances were submitted after that case. The grievors were not told or led to believe or promised that their prior military service would be included in the calculation of their vacation leave credits. The grievors knew the position of the employer. The grievors would not be given extra vacation leave. Mr. Palmer was told that this would be looked into.

Counsel stated that there is no estoppel in this case; there was no unequivocal promise made to the grievors. Adjudicator T.O. Lowden in his decision in the Deniger and Miller case (supra) used estoppel to distinguish it from the decision of the Federal Court of Appeal in Bolling et al. v. Public Service Staff Relations Board [1978] 1 F.C. 85. Counsel submitted that the grievances should be dismissed.

In reply, the grievors' representative stated that in the Hough decision (supra), if the grievor had met the preconditions of Treasury Board Minute 743882 (Exhibit G-2) the adjudicator would have allowed the grievance. In this case, the words of the collective agreement speak for themselves.

Reasons for Decision

In *Collective Agreement Arbitration in Canada,* Third Edition, Messrs. Palmer and Palmer state the following at pages 121 and 122:

> *4.9. As a rule of construction, the clear words of a collective agreement are to be given their ordinary and plain meaning. Some of the cases refer to this as the "original grammatical meaning" or the "dictionary meaning". The rule and its rationale have been expressed as follows:*
>
> *... [W]e must ascertain the meaning of what is written into [a] clause and to give effect to the intention of the signatories to the Agreement as so expressed. If, on its face, the clause is logical and is unambiguous, we are required to apply its language in the apparent sense in which it is used notwithstanding that the result may be obnoxious to one side or the other. In those circumstances it would be wrong for us to guess that some effect other than that indicated by the language therein contained was contemplated or to add words to accomplish a different result.* (Massey-Harris, 4 L.A.C. 1579, at 1580 (Gale, 1953).

They comment further at page 123:

> *4.14. It is widely accepted by arbitrators that the collective agreement is to be construed as a whole. Therefore words and provisions must be interpreted in light of the entire agreement.*

I would like to point out that in reaching my conclusion on these grievances it was not necessary for me to give any weight to the documents which counsel for the employer objected to. The relevant collective agreement provides at clause 21.01 that vacation leave credits shall be earned by an employee on the basis of his total years of service. Clause 21.03 specifies that for the purpose of Article 21 "service" includes, among other things, periods of continuous employment. Continuous employment is defined in Article 2 as having the same meaning as specified in the Public Service Terms and Conditions of Employment Regulations. A copy of the relevant portion of these Regulations was attached to the Agreed Statement of Facts. These Regulations provide that, in respect of a person appointed to Part I Service as an indeterminate employee, a prior period of employment in the Canadian Armed Forces counts as continuous employment provided that he was honourably released from the Armed Forces, has elected to contribute for that service under the *Public Service Superannuation Act* and provided that no more than three months have elapsed since his release from the Armed Forces and his appointment to the Public Service. The

evidence establishes that the grievors meet these requirements. They are therefore entitled to count their prior service in the Canadian Armed Forces for the purpose of calculating their annual entitlement to vacation leave credits.

It appears that the definition of continuous employment contained in Article 2 of the predecessor to the collective agreement which I am now considering was not brought to the attention of Mr. Lowden in the Deniger and Miller case (supra). Therefore Mr. Lowden's decision in that case can be distinguished from the matter before me.

Accordingly, for all these reasons the grievances are allowed.

Richard Labelle,
Board Member

OTTAWA, November 29, 1996.