

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

JACQUES A. CHARPENTIER AND GERMAIN TRUDEAU

Grievor

and

**TREASURY BOARD
(Environment Canada)**

Employer

Before: Yvon Tarte, Chairperson

For the Grievor: Georges Nadeau

For the Employer: Richard Turgeon

Heard at Ottawa, Ontario,
April 4 and December 10 and 11, 1996

DECISION

Mr. Charpentier and Mr. Trudeau filed identical grievances, which read as follows:

[Translation]

Under Article M-27 of the collective agreement, without limiting myself to this authority, I am filing a grievance against my employer, who has required that I perform a major portion of the duties of the positions at the GT-5 level without paying me the appropriate acting pay since July 2, 1992.

Corrective action requested:

[Translation]

- 1. That I be paid in accordance with the rates indicated in Appendix "A" of the Group Specific Agreement for the GT group.*
- 2. That I be paid at these rates retroactively to July 2, 1992.*

Preliminary objection

At the outset of the hearing, Mr. Turgeon filed a preliminary objection as to jurisdiction. This objection was based on the provisions of section 7 of the *Financial Administration Act* and section 7 of the *Public Service Staff Relations Act*:

Financial Administration Act

7. (1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to

(a) general administrative policy in the public service of Canada;

(b) the organization of the public service of Canada or any portion thereof, and the determination and control of establishments therein;

(...)

(e) personnel management in the public service of Canada, including the determination of the terms and conditions of employment of persons employed therein;

(e.1) the terms and conditions of employment of persons appointed by the Governor in Council that have not been

established under this or any other Act of Parliament or order in council or by any other means;

Public Service Staff Relations Act

7. Nothing in this Act shall be construed to affect the right or authority of the employer to determine the organization of the Public Service and to assign duties to and classify positions therein.

According to Mr. Turgeon, the grievances were, in reality, simply classification grievances in disguise and therefore could not be heard by the Board.

Mr. Nadeau argued that the grievors were not seeking to have their positions reclassified, but rather wished to receive the acting pay that was owed to them.

I indicated to the parties that I would be hearing the evidence on the main issue before deciding on the preliminary question.

Evidence

For the grievors

Mr. Charpentier has been an environmental investigator in Montreal since January 1990. His position is classified at the PM-4 level.

When Mr. Charpentier's employment started, his position was classified GT-4. Since 1991 the grievor has been talking with his supervisor, Guy Martin, about the possibility of having his position reclassified to the GT-5 level. This reclassification request is based on the belief that similar positions are classified GT-5 in British Columbia and Ontario.

In May 1993, Mr. Charpentier received a new work description (Exhibit P-3). In November 1993, the employer informed Mr. Charpentier that his position had been reclassified to the PM-4 level. In March 1994, the grievor presented to the employer a classification grievance, which was subsequently dismissed. In April 1994, Mr. Charpentier filed the acting pay grievance that is at issue here (the grievances

were referred to adjudication on November 25, 1994 and because of adjournments the case was not heard until April 4, 1996).

The grievor filed a work description for a position in Toronto as an "Environmental Investigation Specialist", classified at the GT-5 level (Exhibit P-4). Mr. Charpentier claimed that in his current position he performs all the duties indicated in Exhibit P-4 except for those pertaining to training. In cross-examination, the grievor admitted he had not taken any post-secondary courses in chemistry, in physics or on technical products.

Mr. Trudeau has been an environmental investigator in Montreal since August 1990. His position is currently classified PM-4. The situation described by Mr. Charpentier applies to him also. Mr. Trudeau also says he performs almost all the duties indicated in Exhibit P-4. Like Mr. Charpentier, Mr. Trudeau does not officially do any training.

Jean Comptois, acting head of investigations, testified that the grievors perform most of the duties indicated in Exhibit P-4 for the "Environmental Investigation Specialist" position in Toronto.

Pierre Marleau is a classification and pay equity officer with the Public Service Alliance of Canada. According to Mr. Marleau, the grievors' positions are similar to the position in Toronto (GT-5), since 80 percent of the duties indicated in Exhibit P-4 are also indicated in Exhibits P-3 and P-8 (Mr. Charpentier's and Mr. Trudeau's work descriptions). Mr. Marleau indicated in cross-examination that he had not verified whether the person who held the GT-5 position in Toronto performed duties that were not indicated in Exhibit P-4.

For the employer

Jean Cinq-Mars is the regional director for the environmental conservation unit, Quebec region. According to this witness, the grievors' work descriptions are comparable but not identical to the work description for the position in Toronto (Exhibit P-4).

Further to Mr. Charpentier's and Mr. Trudeau's classification grievances, the employer conducted a Canada-wide study of the relativity of the classification of the investigators'/inspectors' positions. Mr. Cinq-Mars ultimately indicated that the investigators and inspectors in Montreal worked in different sections and performed different duties.

Jean-Claude Guindon works for the employer in the area of classification. Further to the grievors' classification grievances, it was he who suggested the Canada-wide study referred to previously by Mr. Cinq-Mars. In a memorandum (Exhibit E-3) sent to the Department's regional directors general, human resources managers and heads of classification, the employer noted that the Canada-wide study was being conducted further to a hearing of classification grievances which indicated either a relativity problem with regard to a classification of the positions responsible for enforcing the *Canadian Environmental Protection Act* or a need to describe the actual requirements of these positions. Environment Canada divides the country into five regions.

The study showed that, in the Atlantic region, the investigators' positions are classified PM-4 and the inspectors' positions GT-5, as they are in the Quebec region.

In the Prairie and Pacific regions, the investigators' and inspectors' positions are combined and classified GT-5. In the Ontario region, in Toronto specifically, the investigators' positions are classified GT-5. However, although Exhibits P-4, P-3 and P-8 look very similar at first sight, the Canada-wide study showed that the work description for the position in Toronto did not take into account all the duties assigned to the investigator's position. It appears from the study that the investigators in Toronto perform inspectors' duties that have not been duly noted in the work description.

Following the Canada-wide study, Mr. Guindon drafted a memorandum which was sent to the regional directors of human resources (Exhibit E-9):

[Translation]

The Canada-wide study concerning the environmental investigators' positions has been completed. It is our view that the positions in the Ontario, Pacific and Yukon regions as well as the Prairie and Northern regions have been correctly classified in the technical category. Technical inspection during investigations is an integral part of the duties for the investigators' positions in these three regions.

For example, when infractions in pulp and paper plants are being investigated, it is necessary to understand how these plants operate and the process by which effluents are treated in order to be able to determine the causes of contamination. It is necessary to go back to the source of the contamination by following the trail from the property, through the sewer systems or from the warehouses to the sewer systems, ditches and waterways. This is necessary in order to understand the enforcement process and to make it possible to assess the source of chemicals that show up in the results of chemical analyses. For the purposes of investigating spills, it is necessary to understand the chemical process that contributes to making the substance harmful to health and the need for or use of the substance in question in the industrial process.

The work also requires collecting biological and chemical samples, evaluating the operations of various companies in order to determine the source of the problem and issuing an "inspector's directive" to cease discharging substances that are harmful to health. This requires an understanding of the chemical components of the products in order to identify the sources contributing to the problems. In some regions, inspectors must report to the scene of emergency and dangerous situations (spills) and act as advisors in order to control the situation and the clean-up. They provide technical advice on health protection and intervene on site with the regional control centre.

It is obvious that these positions must investigate the causes of the contamination and recommend control and clean-up in certain emergency situations. This work requires investigations in natural and physical sciences, the inspection of chemical and physical substances and materials, and the inspection of complex mechanisms and system equipment. These requirements are in keeping with the definition for the technical category.

Investigators in Quebec and the Atlantic regions are primarily responsible for performing compliance inspections and preparing technical reports in accordance with the

Fisheries Act and Regulations and the CEPA. Activities include examining cases, observing operations, sampling, working with still and video cameras, operating various pieces of communication equipment, radar, readers and metal detectors, and performing tests with colorants. The work also requires performing detailed investigations that entail interviewing, monitoring, collecting and compiling data and information, obtaining and executing search warrants, initiating legal proceedings and gathering evidence.

In short, the mandate for the positions in Quebec and the Atlantic regions is to enforce the legislation following violations identified by various sources and to prepare files on infractions. This does not meet the requirements for inclusion in the technical category. As indicated by the management of the Quebec region, the investigators have always required the inspectors' support to perform the smallest tasks of a technical or scientific nature, such as sampling or simple measurements.

Peter Levedag is the head of the investigations section in Toronto. He confirmed that the investigators who report to him are classified at the GT-5 level. Mr. Levedag filed a work description (Exhibit E-10) which replaces Exhibit P-4 and which was prepared in June or July 1996.

The witness explained that the new description did not change the investigators' work in any way. It had been prepared in order to clarify Exhibit P-4, which was found to be too general.

According to Mr. Levedag, the investigators in Toronto, like those in Montreal, may be asked during an investigation to take samples of substances to be used as evidence during subsequent legal proceedings. Analysis of these samples is never performed by the investigators themselves. Moreover, complex sampling is always done by specialized technicians.

Mr. Levedag also indicated that his investigators were occasionally required to do training.

John Grieves is an investigator (GT-5) in Toronto. He confirmed that the organization of the regional office in Toronto is identical to that which is found in Montreal. His work resembles the duties performed by Mr. Charpentier and

Mr. Trudeau. Mr. Grievés does not have any special expertise in collecting samples. Like the grievors, he does not have any science degrees and comes from a police background.

Evidence in rebuttal

Robert Baxter is also an investigator (GT-5) in Toronto. According to Mr. Baxter, Exhibit P-4 accurately describes the duties he has been performing since 1990. He does very little sampling in performing his duties. Since starting in this position in Toronto in 1992 he has not had to do any training.

Arguments

For the grievors

The two grievances were filed further to incidents that took place in July 1992 when the grievors attempted to have their positions reclassified. These initial attempts led to the preparation in May 1993 of new work descriptions. In April 1994 Mr. Charpentier's and Mr. Trudeau's positions were reclassified at the PM-4 level.

They learned at that time that the investigators in Toronto performing the same work, however, had been reclassified at the GT-5 level. In the face of the employer's refusal to reclassify their positions, the grievors felt obliged to file acting pay grievances under clause M-27.07 of the Master Agreement (Exhibit P-1):

- (a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least the period specified in (b) below, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts,*
- (b) *for the number of consecutive working days as follows:*

<u>Group</u>	<u>Level</u>	<u>Number of days or positions</u>
LS.....	ALL.....	10
AS.....	ALL.....	10

<i>IS</i>	<i>ALL</i>	10
<i>PM</i>	<i>ALL</i>	10
<i>PG</i>	<i>ALL</i>	10
<i>DD</i>	<i>ALL</i>	4
<i>EG</i>	<i>ALL</i>	4
<i>GT</i>	<i>ALL</i>	4
<i>PY</i>	<i>ALL</i>	4
<i>PI</i>	<i>ALL</i>	4
<i>SI</i>	<i>ALL</i>	4
<i>TI</i>	<i>ALL</i>	4
<i>CM</i>	<i>ALL</i>	4
<i>DA</i>	<i>ALL</i>	4
<i>CR</i>	<i>ALL</i>	4
<i>OE</i>	<i>ALL</i>	4
<i>ST</i>	<i>ALL</i>	4
<i>CX (S&NS)</i>	1 to 6.....	1
.....	7 and 8	4
<i>FR (S&NS)</i>	<i>ALL</i>	1 position
<i>GL (S&NS)</i>	<i>ALL</i>	2
<i>GS (S&NS)</i>	<i>ALL</i>	2
<i>HP (S&NS)</i>	<i>ALL</i>	3
<i>LI (S&NS)</i>	<i>ALL</i>	3

The grievors perform almost all the duties indicated in Exhibit P-4. This fact was confirmed, moreover, by Mr. Comptois. The testimony of the investigators in Toronto only confirmed once more Mr. Charpentier's and Mr. Trudeau's claims.

Exhibit E-10 filed by the employer does not change this situation, since it was not prepared until long after the grievances had been filed. In any event, according to Mr. Levedag they merely clarify Exhibit P-4.

The investigators from Toronto and Montreal have roughly the same background in terms of work and education. They perform only basic sampling which does not require any advanced technical knowledge. For all practical purposes, the investigators in Montreal and Toronto do the same work.

The grievors are not asking to have their positions reclassified but simply to receive fair remuneration at the GT-5 level. The Federal Court ruled in *Stagg* (T-1604-92) that questions of remuneration were within the Board's jurisdiction.

Mr. Charpentier's and Mr. Trudeau's grievances must therefore be allowed. They are entitled to acting pay since July 1992, that is, since the start of their efforts to obtain justice in this matter.

For the employer

Stagg is not relevant since in that case the grievor's position had been reclassified to a higher level.

Mr. Charpentier's and Mr. Trudeau's grievances are in fact classification grievances. *Nagle* (Board file 166-2-21445) and *Dougherty* (Board files 166-2-25137 to 25142 and 25162) clearly show the limits of the adjudicators' jurisdiction in similar cases.

To allow these grievances would mean reclassifying the grievors' positions at the GT-5 level, in violation of the provisions of section 7 of the *Public Service Staff Relations Act* (supra).

The employer is not contesting the fact that the duties for the positions in Montreal and Toronto are similar. It does not matter that the classification of the positions in Toronto may be inaccurate if the classification of Mr. Charpentier's and Mr. Trudeau's positions is accurate. As was stated in *Chong* (Federal Court of Canada T-2490-94), a classification committee is clearly entitled to take regional differences into consideration.

Following a national study, the employer concluded that the investigators' positions in Toronto had to be classified at the GT-5 level and those in Montreal at the PM-4 level. This decision is at the employer's discretion and the grievances must therefore be dismissed.

Reply

Although it is true that the employer controls the assignment of duties and classification, the Master Agreement (Exhibit P-1) provides for acting pay in a case such as this. These matters raise a fundamental question of equity.

Grounds for decision

The employer objects to my hearing Mr. Charpentier's and Mr. Trudeau's grievances on the ground that these grievances are in reality nothing more than classification grievances, which cannot be subject to a reference to adjudication under section 92 of the *Public Service Staff Relations Act*.

The evidence showed that the investigators' positions in Montreal and Toronto are, for all practical purposes, almost identical. I must, however, accept that the employer undertook a classification exercise which produced the dichotomy between the positions in Montreal and Toronto. In view of the evidence before me, I find it difficult to understand the classification differences in this case.

I do not, however, have the necessary authority to decide whether the employer's decision was valid in the area of classification. Although the wording of the grievances concerns the acting pay and makes no mention of "classification", granting the redress that has been requested would be the same as a reclassification. These cases have much more in common with *Dougherty* (supra) than *Stagg* (supra), since the grievors' positions have never been reclassified to the GT-5 level. Only the Federal Court has the jurisdiction to amend the employer's classification decision.

I must therefore conclude that it is not within my jurisdiction to hear

Mr. Charpentier's and Mr. Trudeau's grievances. The grievances are therefore dismissed.

**Yvon Tarte
Chairperson**

OTTAWA, January 31, 1997.

Certified true translation

Serge Lareau