



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**MURRAY LINDEBLOM**

Grievor

and

**TREASURY BOARD  
(Fisheries and Oceans)**

Employer

***Before:*** J. Barry Turner, Board Member

***For the Grievor:*** George Smith, Professional Institute of the Public Service of  
Canada

***For the Employer:*** Roger Lafrenière, Counsel

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Heard at Winnipeg, Manitoba,  
February 27, 1996.

## DECISION

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Murray Lindeblom, a Computer Specialist, CS-3 classification level, Freshwater Institute, Department of Fisheries and Oceans, Winnipeg, Manitoba, is grieving the denial of acting pay, as a violation of Clause 44.05 of the Computer Systems Administration (all employees) Group specific agreement, between the Treasury Board, and the Professional Institute of the Public Service of Canada (PIPSC), Code: 303/88, expiry date April 30, 1990.

The grievance reads:

*I hereby grieve that I have been appointed acting Regional Chief of Informatics, Central and Arctic Region effective July 4, 1994 through August 12, 1994. I have requested acting appointment. I was denied this on August 29/94. I feel this is a violation of article 44 of the CS collective agreement.*

It should be noted that the parties agreed the correct acting period in question is from Monday, July 4, 1994 through to and including Monday, August 8, 1994.

Clause 44.05 reads:

*44.05 When an employee is required by the Employer to perform the duties of a higher classification or grade level on an acting basis for a period of at least ten (10) consecutive working days he shall be paid acting pay calculated from the date on which he commenced to act as if he had been appointed to the higher classification level for the period in which he acts. When a day designated as a paid holiday occurs during the qualifying period, the holiday shall be considered as a day worked for purposes of the qualifying period.*

The grievor is requesting the following corrective action:

*Granting of Acting Appointment and payment of acting pay.*

I am being asked to decide if the employer properly interpreted Clause 44.05 of the Group specific agreement.

The hearing lasted one-half day with two witnesses testifying and twelve exhibits submitted into evidence.

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SUMMARY OF EVIDENCE

1. Murray Lindeblom has been a CS-3, Computer Specialist, since he joined the Public Service in 1980. Mr. Lindeblom identified an electronic mail message (E-Mail) (Exhibit G-1) from his immediate manager, Mr. Tinney, that reorganized the Informatics Group in Winnipeg and gave the grievor an expanded role. He also identified another E-Mail between himself and Mr. Tinney regarding the availability of money for acting pay for someone to replace the grievor during the period May 27 to June 10, 1994 (Exhibit G-2). He identified a third E-Mail (Exhibit G-3) sent to him by Mr. Tinney that specified that the grievor and his colleague Bill Beggs were to split responsibilities between them while Mr. Tinney was on an extended vacation from July 4, 1994 through August 12, 1994 (should be August 8). Mr. Lindeblom said he had not discussed this decision beforehand with Mr. Tinney even though he had acted for him often in the past. He was surprised that the duties were split.

At this point in the hearing, Mr. Lafrenière requested Mr. Tinney to be excluded because of what may have become a credibility problem between Mr. Tinney and the grievor. I granted his request.

The third E-Mail (Exhibit G-3) reads in part:

*During my absence from the office for the period July 4, 1994 through August 12, 1994, inclusive, the duties of the position of Regional Chief of Informatics, Central & Arctic Region, will be split between the following two persons:*

*Murray Lindeblom will be responsible for all Informatics Issues, including Regional Representation to the national level, Regional Informatics Security Coordinator, and approvals of all regional Informatics acquisitions. Mr. Lindeblom can be reached at 204-983-5093 in Winnipeg.*

*Bill Beggs will be responsible for the supervisory duties of the position and any financial requirements that might arise. Mr. Beggs can be reached at 204-983-5269 in Winnipeg.*

Mr. Lindeblom testified that during this acting period, his recently expanded role (as per Exhibit G-1) remained in place, and that he performed about ninety-five percent of Mr. Tinney's work that included a trip to Ottawa. He in fact testified that the "buck stopped at me". He said that he did not discuss Exhibit G-3 with Mr. Tinney before he left on vacation but that he never considered not doing the split duties. He

said that since he had acted for Mr. Tinney in the past and had been paid accordingly, he expected the same this time. During the acting period, he and Mr. Beggs, a meticulous accountant according to Mr. Lindeblom, compared purchase orders to actual invoices to clarify details. He added that Mr. Beggs had no computer or informatics skills, nor did he think that Mr. Beggs had "good points for management skills". Mr. Lindeblom said the other employees thought he was the one in an acting position and would see him for advice and guidance.

The grievor identified an E-Mail dated August 29, 1994 from Mr. Tinney (Exhibit G-4) expressing surprise that the grievor had requested acting pay for the period in question. Mr. Lindeblom said that since he expected to be paid for the acting period he did not bring up the payment issue earlier. He said Mr. Tinney returned early on Friday, August 5, 1994 for a meeting. The witness did not agree with the reference in Ms. Hynna's final level response (Exhibit G-5) that he was not led to believe that he was doing CS-04 duties or that he would receive acting pay at the CS-4 level. He thought he would be paid accordingly. He said that the gross amount of money that he is concerned with in this grievance is approximately \$150.00.

During cross-examination, Mr. Lindeblom identified three other occasions when he acted for Mr. Tinney (Exhibits E-1, E-2, E-3) and added that the difference this time, (Exhibit G-3), was the split of some responsibilities with Mr. Beggs. He identified his own position analysis schedule (P.A.S.) dated June 1, 1980 as Exhibit E-4. He said that during the acting period July 4 to August 8, he performed many of his own duties, a lot of which are the same as those of Mr. Tinney. He found it difficult to divide what tasks of Mr. Tinney's he performed when compared to his own, especially since he was the only person reporting to Mr. Tinney. He identified the P.A.S. for Mr. Tinney (Exhibit E-5) as a position that he also applied for. Mr. Tinney won the competition. Mr. Lindeblom did not use this P.A.S. to assess what he did during the acting period in relation to Mr. Tinney's roles especially since the grievor had been in the department for sixteen years and therefore had a lot of experience and did not really need the P.A.S. to help him assess what he did. He reiterated that prior to departing on leave, Mr. Tinney had not spoken to him about what he expected Mr. Lindeblom to do in his absence, and that he did not know the duties were to be split.

Mr. Lindeblom agreed that the supervision he exercised over a CS-2 was removed from him under the regional re-organization. He said that he performed the duties outlined for him by Mr. Tinney in Exhibit G-3 and that no one acted in his position while he was acting for Mr. Tinney since they are "grossly understaffed".

Mr. Lindeblom prepared the request for acting appointment (Exhibit E-6) that is normally prepared by one's supervisor and gave it to Mr. Tinney without discussion.

During re-examination, Mr. Lindeblom said that when he acted for Mr. Tinney in the past, since his own job and Mr. Tinney's blended together, he would perform functions from both jobs, including his own supervisory responsibilities.

2. Brad Tinney became Regional Chief of Informatics in 1990. He assigned three particular duties to Mr. Lindeblom before Mr. Tinney went on vacation (Exhibit G-3), and identified some other duties that the grievor would have performed under items one through six on Mr. Tinney's P.A.S. (Exhibit E-5). He added that about one-third of his time is spent managing staff and funds, and that these were the split duties he assigned to Mr. Beggs in Exhibit G-3.

Mr. Tinney said that of the three main duties he assigned the grievor, that is security matters, took "nothing" of Mr. Tinney's time; approvals of acquisitions about a half-day only; and national level representations about four to five days depending on meetings called. He concluded therefore that during this acting period "most of the grievor's time would have been spent on his substantive position".

Mr. Tinney testified that he met with Mr. Lindeblom on June 23, 1994 in Winnipeg while doing his performance review, and discussed his upcoming vacation and the split of duties that followed in Exhibit G-3. He added that they discussed the fact that there was no available funding for acting assignments and that the grievor expressed that he did not think this was right.

Mr. Tinney said that the Request for Acting Appointment (Exhibit E-6) came as a surprise to him. It is normally filled out by the affected employee's Supervisor. He said during the acting period July 4 to August 8 Mr. Lindeblom may have done five days of work at the CS-4 level outside of a trip to Ottawa.

During cross-examination Mr. Tinney said that Mr. Lindeblom is qualified to act for him, had done so in the past, and was paid accordingly. He said that he thought that funds for acting pay had run out but agreed that if someone qualified for acting pay that they have to be paid. He admitted the primary reason for splitting the duties between Mr. Beggs and the grievor was to save money. He also said that during the June 23 discussion with Mr. Lindeblom, he did not describe in detail how the duties would be split, just that the technical work would be with Mr. Lindeblom and the supervisory work with Mr. Beggs. He added there is overlap of duties between CS-2's, CS-3's and CS-4's. With reference to Exhibit E-5, item 5 on page 4, Mr. Tinney said that Mr. Beggs did not have any special qualification to supervise highly specialized technical staff. He added that "no one does all their duties every day". He agreed that the grievor performed the core of his own job and did some of Mr. Tinney's at the time in question especially since their jobs overlap a lot.

Regarding the split of duties, Mr. Tinney did not feel that the duties assigned to Mr. Lindeblom were enough to cause a change from a CS-3 to a CS-4 level of responsibility. Mr. Tinney identified a note to file dated June 29, 1994 from Ms. B. Couture that show a job rating for the position of Regional Chief of Informatics (Exhibit G-6).

#### ARGUMENT FOR THE GRIEVOR

Mr. Smith presented typed notes for his argument that are hereby summarized. He argued that under Clause 44.05 of the Group specific agreement, Mr. Lindeblom not only performed work of a higher classification for a five week period, but he was also performing a special assignment under an expanded role as described in Exhibit G-1. He concluded that the evidence shows the grievor performed the duties he was asked to perform on behalf of Mr. Tinney, including the approval of all regional informatics acquisitions. He expected to be paid accordingly as in the past as shown on Exhibits E-1, E-2, E-3. He argued that the word "required" in Clause 44.05 has two meanings; one "demand" the other "need". He concluded that the employer had a need for Mr. Lindeblom to perform Mr. Tinney's duties and demanded that he do so in Exhibit G-3. He said the employer's argument that because Mr. Beggs was asked to perform supervisory and financial requirements for Mr. Tinney, that Mr. Lindeblom could not have performed "substantially" as is referred to in the Master

Agreement, the role of Mr. Tinney. Mr. Smith concluded this was unfair since the grievor performed all that was asked of him in a satisfactory manner, that is his newly expanded regional duties in Exhibit G-1 as well as Mr. Tinney's duties in Exhibit G-3. He argued that the central core of the duties performed by the grievor on behalf of Mr. Tinney were technical in nature, and sufficient to be paid at a higher classification.

He said the time spent performing the technical responsibilities by Mr. Lindeblom outweighed the supervisory aspect of the job performed by Mr. Beggs and that the grievor performed the majority of Mr. Tinney's core duties of a CS-4 especially when one considers the additional duties of the expanded role he was already performing.

Mr. Smith concluded that the sixteen year old job description for the grievor (Exhibit E-4) does not even apply anymore.

He argued that Mr. Tinney's reference in Exhibit G-2, "When the available funds runs out, there will be no more acting pay" is not only contrary to the Group specific agreement but is "cavalier, transparent and in bad faith".

He concluded that what we have been arguing here amounts to an approximate amount in gross dollars of \$150.00, and that "the highest level of difficulty for Mr. Tinney's position is not supervision, but the bulk of the other tasks that were done by the grievor". He should be compensated accordingly.

Mr. Smith also described Exhibit G-6, a note to file by Ms. Couture dated June 29, 1994 as a self-serving attempt by management to deny Mr. Lindeblom acting pay. Mr. Smith said this document indicates that knowledge and decision-making make up 70% of the rated requirements. Supervision is only 8% of the rated requirement of Mr. Tinney's position, which leaves 92% of the balance of the job to Mr. Lindeblom.

He argued, in order to "supervise" in this position, clearly one requires the knowledge base of a Computer Specialist and the decision-making ability in order to perform the role of a CS-04. It is too simplistic and transparent to simply remove the

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supervisory points as Ms. Couture did on Exhibit G-6, and say the job is no longer a CS-4 classification.

The date of June 29, 1994 at the top of this document was also of concern to Mr. Smith, as the evidence before me is that Mr. Tinney returned from his vacation on August 5th, 1994, a week earlier than expected. He argued Ms. Couture would have to be clairvoyant to have written this document on June 29th. Mr. Smith said the alternative to clairvoyance is that the document was created sometime after Mr. Tinney returned from vacation, in order to support a denial of acting pay.

He concluded however, that the issue before me is not a classification issue, but an issue of pay for work performed at a higher level.

Mr. Smith referred me to: Osmond (Board file 166-2-1603); Re Ontario Hydro and Canadian Union of Public Employees, Local 1000 (1983), 11 L.A.C. (3d) 404; Re Fairview Nursing Home Inc. and London and District Service Workers Union, Local 220 (1983), 9 L.A.C. (3d) 342; Macri (Board file 166-2-15319); Begin et al. (Board files 166-2-18911 to 18917); Re City of Winnipeg and Canadian Union of Public Employees, Local 500 (1991), 20 L.A.C. (4th), 394.

#### ARGUMENT FOR THE EMPLOYER

Mr. Lafrenière argued that even though Clause 44.05 does not say "substantially perform" as is written in the Master Agreement, he asked me to consider these words as included within the meaning of Clause 44.05. He said the key words are however, "required", "perform" and "period of at least 10 consecutive working days".

He argued that Exhibit G-3 was a different acting situation from previous ones because of the split of duties between the grievor and Mr. Beggs. He argued that I will have to determine what happened on June 23, 1994 during the performance review meeting between Mr. Tinney and Mr. Lindeblom. He reminded me that Mr. Tinney was very specific about what he and Mr. Lindeblom discussed, and concluded that it would be very unlikely for a manager to leave on vacation without talking to his replacement. He said I should believe what Mr. Tinney said at the June 23 meeting that there would be no acting pay for Mr. Lindeblom.



He argued that for Mr. Lindeblom to qualify for the requested acting appointment he would have had to demonstrate that he substantially performed the duties of Mr. Tinney as outlined in the P.A.S., Exhibit E-5. He concluded that he did not. Some duties were assigned to Mr. Beggs, some held in abeyance, some assigned to the grievor and a lot of duties overlap with others. He reminded me that the grievor was reluctant to say he performed his own duties during cross-examination as well as Mr. Tinney's duties. He also argued Mr. Tinney said the grievor would need only five days within the five weeks to perform the Tinney duties, and that we heard nothing about the trip to Ottawa by the grievor. He said the reference to the re-organization of responsibilities in Exhibit G-1 was not relevant.

Mr. Lafrenière argued that in Osmond (supra) the grievor was not required to perform his own duties; that Re Ontario Hydro and CUPE (supra) was a classification case that I cannot decide; that Re City of Winnipeg and CUPE (supra) the issue was that the duties did not keep up with changes in technology; that in Macri (supra) the collective agreement did not require the substantial performance of duties at a higher level. He added that the Re Fairview Nursing Home Inc. Ltd. and London and District Service Workers Union, Local 220, (supra) is also a classification issue beyond my jurisdiction. He argued that the French version of Clause 44.05 refers to "d'un poste" meaning "a position" and that even though the English version is silent here, I should read "position" as understood.

In Begin (supra), Mr. Lafrenière said it was not argued that the English version should not apply, but said the key was to look at the word "substantially" since the issue is a factual decision regarding the percentage of time spent doing someone else's duties.

Counsel referred me to Few (Board files 166-2-17441 to 17443) as a case on point since Mr. Tinney testified he told the grievor in advance on June 23, 1994 what would happen during his upcoming absence. He reminded me that even though the grievor said the buck stopped with him, Mr. Beggs was given financial responsibility, not Mr. Lindeblom. As in Afzal (Board file 166-2-19422), counsel argued that Mr. Lindeblom did not demonstrate that he substantially performed the duties of the CS-4 position, nor was it ever satisfactorily explained what the overlapping duties

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were. He added however that there may have been five days while in Ottawa where the grievor performed a duty.

Mr. Lafrenière argued that in a period of fiscal restraint, re-allocation of duties to more than one person while someone is on leave is an appropriate management decision. He concluded that by waiting until after the alleged acting assignment was over to submit a request for appointment was reprehensible, and that an employee must not be allowed to benefit from his silence since any doubt concerning the matter could have been settled on June 23 or June 29 before Mr. Tinney went on leave.

In his rebuttal argument, Mr. Smith said Mr. Tinney proceeded on his desire not to pay acting pay and that Mr. Lindeblom has a right to wait to grieve his situation. He also argued that I cannot add words to Clause 44.05 like "substantially", and that the Request for Acting Appointment (Exhibit E-6) was received on August 29, 1994, only three weeks after the acting period ended.

#### DECISION

Mr. Lafrenière argued that the words "substantially perform the duties" in the acting pay provisions of the PIPS Master Agreement with the Treasury Board, expiry date: September 30, 1993, Clause 46.09, Acting Pay, should be read into the Group specific agreement, Clause 44.05, that only reads "perform the duties". On the contrary, I am of the view that the Group specific agreement prevails over the applicable Master Agreement in circumstances where provisions dealing with the same subject-matter could not be reconciled.

In any event, after reviewing the PIPSC Master Agreement, I can find no reference that this agreement even applies to the Computer Systems Administration (CS) group. I have therefore concluded that the employer's argument regarding the implications and applicability of the word "substantially" from the Master Agreement, Acting Pay, is not a useable standard of measurement in this case in any event.

I am therefore left with the wording in Clause 44.05 of the CS Group specific agreement that reads in part:

*... When an employee is required by the Employer to perform the duties of a higher classification or grade level ...*

The question that I must answer is did Mr. Lindeblom "perform the duties" of Mr. Tinney during the acting period of July 4, 1994 through to and including August 8, 1994, a period of more than ten consecutive working days? Does "perform the duties" mean all or some of the duties? If it means all the duties, since the duties were split by Mr. Tinney in Exhibit G-3 between Mr. Lindeblom and Mr. Beggs, neither of them could get acting pay. Similarly, if it means some of the duties, then both Mr. Beggs and Mr. Lindeblom are entitled to acting pay for Mr. Tinney. It is unlikely that the parties would have meant that two persons could receive acting pay for essentially filling the same position when the Group specific agreement was negotiated.

I have concluded therefore that "perform the duties" must mean all the duties, recognizing as Mr. Tinney said, that no one performs all their duties every day. The grievor could therefore not have performed as Mr. Smith argued "the core duties" of the higher rated classification, since these duties were split between two persons.

Is this an ingenious way for the employer to legally save money? Is it right? I can only say that I do not believe it is a breach of the CS Group specific agreement for the reasons given above. As for Mr. Smith's suggestion of bad faith, I have before me no such evidence, although I have some concern about the clairvoyance of Ms. Couture's note to file (Exhibit G-6).

Therefore for all these reasons this grievance is denied.

**J. Barry Turner,  
Board Member.**

OTTAWA, April 3, 1996.