



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

INDER MANJIT SINGH

Grievor

and

TREASURY BOARD
(National Defence)

Employer

Before: Albert S. Burke, Board Member

For the Grievor: Dan Quigley, Federal Government Dockyards Trades & Labour
Council, Esquimalt

For the Employer: Harvey Newman, Counsel



Heard at Victoria, British Columbia,
May 14, 1996.

DECISION

This grievance, Board file 166-2-26815, was referred to adjudication by Inder Manjit Singh who was employed by the Department of National Defence as an electronics apprentice in Victoria, B.C. The grievance reads as follows:

I am an apprentice receiving apprentice level wages but am not receiving education.

At my interview, I was promised training comprising of two months per year, during regular working hours, for apprenticeship years 2, 3, and 4 for a total of 6 months. This training was to take place at Camosun College in Victoria BC. In addition to this verbal promise the apprenticeship contract that I signed with DND states that education will be provided during regular working hours at an institution outside the regular environment.

Now I am being told that I will not receive the promised training and have not been informed of any compensation.

I have presented a proposal to the GM level which has been rejected. The GM responsible for my trade considers the matter closed.

Corrective Action Requested:

I would like the matter opened and direction given not only for the missing education as I proposed but also for the future missing education ie. for years 3 and 4 of my apprenticeship. Or an equivalent alternative that is acceptable to both parties.

The grievor, Mr. Singh, did not appear at the hearing. His representative informed the Board that he would put Mr. Singh's position forward.

Counsel for the employer informed me that he would be challenging my jurisdiction to deal with the grievance on the basis that the subject matter of the grievance does not fall under the ambit of section 92 of the *Public Service Staff Relations Act (PSSRA)*.

Both the grievor's representative and the employer's counsel agreed that I should hear the objection to my jurisdiction and delay hearing evidence on the merits of the case pending my decision on jurisdiction. I agreed to proceed on the objection to my jurisdiction only.

Counsel for the employer referred me to a letter sent to the Board, dated January 4, 1996, from Mr. John McLeod, which reads as follows:

The above grievance was referred to adjudication on October 5, 1995, and copies of the Employer's replies have been provided to you.

The Employer's position is that this grievance is not one that can be referred to adjudication, first because it does not relate to any of the categories in section 92(1)(a) or (b) of the Public Service Staff Relations Act, and secondly, if the Grievor alleges that the grievance relates to the interpretation or application of the collective agreement, there is no indication that the bargaining agent has indicated its support for the reference to adjudication.

Therefore, unless Mr. Singh or the bargaining agent can provide a convincing argument to the contrary, the Employer's position is that the Reference should be dismissed, without a hearing, for lack of jurisdiction.

Counsel said the employer's position has not changed since the letter was written. There is nothing in the grievance that refers to a violation of the collective agreement and there is no provision in the collective agreement to cover training.

Counsel referred me to the second level grievance reply, dated 25 May 1995, to Mr. Singh from Captain B. Blattmann, Commanding Officer, which reads as follows:

I have carefully reviewed the circumstances referred to in your grievance numbered 95-F-ESQ-0015 taking into account the results of the first level hearing and the representation of your representatives at the second level hearing on 16 May 1995.

You grieve the fact that upon joining the apprenticeship program you were promised training during regular working hours at an institution outside the regular environment. You stated that Mr. R. Kirk, now retired from SRUP, did make such a commitment to you.

If Mr. Kirk made such promises he did so in good faith and with the information available to him at the time. Mr. Kirk did indeed attempt to set-up a training program, but to no avail. Further attempts were made by management to introduce a viable training program applicable to all apprentices. Unfortunately, these efforts have also failed for a number of reasons. The primary cause of failure is due to the inherent difficulties to cater to the varied educational

backgrounds of the applicants. The training program, to be successful, will have to be tailored to the individual needs of every applicant; a task which may take a few years to implement.

Notwithstanding the above, it is noteworthy to observe that the formal education standards for apprenticeship are not the sole responsibility of SRUP, but also the BC Provincial Government, Apprenticeship Branch. They have determined that the pre-requisite for employment as an electronic apprentice in SRUP far exceeds the existing provincial requirements. SRUP was advised that you do not require any additional training at a technical college to successfully complete your apprenticeship training.

Based on the foregoing facts, I cannot grant the corrective action you have requested.

A copy of this response is being forwarded to your union representative.

Counsel said this letter and the first level reply to the grievance explain the reasons why no more training was required. The province of British Columbia does not now require as much training for employees to qualify as electronic technicians.

Counsel also referred me to the final level reply to the grievance from R.J. Sullivan, dated 21 September 1995, which reads as follows:

Your grievance, regarding training during your apprenticeship, has been very carefully reviewed and this is the final level reply in the departmental grievance procedure. You were represented at the final level by the Federal Government Dockyard Trades and Labour Council (Esquimalt).

In his second level reply to your grievance, the Commanding Officer has explained the situation regarding the proposed training plan for the SRUP, that you feel was promised to you. It is unfortunate that the proposed plan could not proceed on schedule, nevertheless, you entered the apprenticeship program with qualifications that met the requirements of the Department of National Defence, and exceeded those of the Provincial Government.

The Contract of Apprenticeship requires you to take training, that is selected by the Department, concerning your trade. Although the proposal for day coursing that you submitted may well improve your qualifications, since you already meet the requirements, the Department has not selected further

training for you at this time. Accordingly, it was not inappropriate for management to deny your submission. Your grievance is denied and the corrective action requested will not be granted.

By copy of this letter, your union representative at the final level is advised of my decision.

Counsel said the Department's position is that the extra training is not required and even if the grievor was promised more training at the time he was hired, the requirements of the provincial government for him to qualify have now changed. The employer would only have a moral obligation, not a legal one, to now give training to an employee when that training is not fully required. There has been no violation of the collective agreement or any disciplinary action taken against the grievor. Counsel said Mr. Singh was a good employee and there were no problems with his work. Mr. Singh has resigned from his position since the grievance was filed. Counsel said section 92 of the PSSRA does not apply here and therefore I do not have jurisdiction.

The grievor's representative argued that the employer clearly made a promise to the grievor when it entered into a contract with him upon his becoming an employee with the Department of National Defence. I was referred to a "Contract of Apprenticeship" between Mr. Singh and the Department of National Defence (Exhibit G-1) and to item 2 of that contract which reads as follows:

The apprentice agrees that in addition to practical training in his trade undertaken in the said Unit he shall during working hours attend a selected educational institution, therein to pursue a course of studies selected by the Minister, and to apply himself diligently thereto.

The grievor's representative also referred me to an "Apprenticeship Agreement" between Mr. Singh, the province of British Columbia and the employer (Exhibit G-2). He referred me to item 2 of that agreement, which reads as follows:

The APPRENTICE, in consideration of the conditions herein contained, agrees

- a) to place himself/herself as an apprentice in the Electronics Technician trade/occupation for a period of 4 years, commencing on the 1st day of October 1992, and completing on the 30th day of September, 1996, with 0 months credit for previous experience;*

- b) to attend regularly such classes in trade training and related subjects as may be prescribed by the Director of Apprenticeship;*
- c) to incur the cancellation of the apprenticeship agreement for wilful failure to attend such classes where such failure could reasonably have been avoided;*
- d) to notify the Director of Apprenticeship when, for any reason, he/she is laid off, voluntarily leaves, or is terminated by the employer to whom he/she is indentured; and*
- e) to the other obligations of an apprentice as outlined in the General Regulations Governing Apprenticeship.*

The grievor's representative said both of these documents clearly say that training is required and the employer made a commitment to train Mr. Singh and then went back on its word.

The representative said Mr. Singh put together a detailed proposal on training that he put forward to the employer (Exhibit G-3) but the employer refused to act on his recommendations.

The employer now says that Mr. Singh has enough training. If that is true, why was he being paid at a lower level? Also, in its grievance replies the employer said it was going to look at a new program for training but nothing has been done. The employer is getting cheap labour by paying at the lower level during apprenticeship periods while claiming no training is required. He said I should take jurisdiction and deal with this matter.

Counsel for the employer said both item 2 of Exhibit G-1 and item 2 of Exhibit G-2 do not form part of the collective agreement. Furthermore, counsel said that an examination of item 2 of Exhibit G-1, will reveal that the Minister will select the studies required for the training program and Mr. Singh is agreeing to take such studies.

Counsel said that Exhibit G-2, item 2 clearly says that Mr. Singh agrees to attend and take such trade training as may be prescribed by the director of apprenticeship. However, if the director does not require any more training, the employer is not contravening the requirements of the apprenticeship training

program. There has been no violation of the collective agreement and no action taken by the employer that would fall under section 92 of the PSSRA. Therefore, an adjudicator has no jurisdiction.

DECISION

Having considered all of the arguments and evidence before me, I have concluded that I do not have jurisdiction in the grievance before me for the following reasons.

Section 92 of the PSSRA reads as follows:

92.(1) Where an employee has presented a grievance, up to and including the final level in the grievance process, with respect to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award,

(b) in the case of an employee in a department or other portion of the public service of Canada specified in Part I of Schedule I or designated pursuant to subsection (4),

(i) disciplinary action resulting in suspension or a financial penalty, or

(ii) termination of employment or demotion pursuant to paragraph 11(2)(f) or (g) of the Financial Administration Act, or

(c) in the case of an employee not described in paragraph (b), disciplinary action resulting in termination of employment, suspension or a financial penalty,

and the grievance has not been dealt with to the satisfaction of the employee, the employee may, subject to subsection (2), refer the grievance to adjudication.

With regard to paragraph 92(1)(a), there was no evidence presented to me demonstrating a violation of the collective agreement. In fact, the collective agreement was never raised by the grievor's representative. Furthermore, there was no disciplinary action taken resulting in suspension or a financial penalty or a

termination or demotion by the employer that would give me jurisdiction under paragraph 92(1)(b) of the PSSRA. There is no suggestion that the grievor's resignation was in reality a termination. I therefore have no jurisdiction and reject the grievance.

I would strongly suggest to both the bargaining agent and the employer to revisit the overall apprenticeship training program for the electronic technicians taking into consideration the revised training requirements by the British Columbia government and the length of time it takes trainees to reach the top level of their pay scale.

**Albert S. Burke,
Board Member**

OTTAWA, June 3, 1996.