

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

ROBERT C. SAUVÉ

Grievor

and

TREASURY BOARD
(Public Works and Government Services Canada)

Employer

Before: [Rosemary Vondette Simpson, Board Member](#)

For the Grievor: [Robert Morissette, Public Service Alliance of Canada](#)

For the Employer: [Michel LeFrançois, Counsel](#)

Heard at Sudbury, Ontario,
August 25, 1998.

DECISION

Mr. Robert Sauvé, an employee of the Taxation Data Centre in Sudbury, classified at the EG-04 level, grieved a letter he received from Leigh Campbell, Chief, Property Management, on November 26, 1993.

The letter (Exhibit E-1) reads as follows:

This is in reply to your request for compensation for services provided over and above your substantive position during the period April 1986 to July 1990. After our discussions on the matter and reviewing the correspondence provided, the existing records were researched for evidence that would support your claim. Interviews were also conducted with the two District Chiefs acting in the position at that time.

Unfortunately no clear evidence can be found that substantiates your claim. With the instability in the Sudbury property management, at that time, it is likely that you and others were required to provide services at a higher level to ensure tenant satisfaction, and, if that is the case, the matter should have been addressed at that time.

With the evidence available we are not prepared to make a retroactive case for additional compensation at this late date.

The grievance was referred to adjudication on January 24, 1996. In a letter dated November 14, 1996, the employer raised for the first time an objection to timeliness of the grievance. Counsel for the employer repeated this objection at the outset of the hearing. Mr. Sauvé is seeking compensation over and above his substantive position for services rendered during the period April 1986 to July 1990.

Counsel for the employer referred to Article M-38 of the Master Agreement between the Treasury Board and the Public Service Alliance of Canada. The relevant sections are set out as follows:

M-38.02 Subject to and as provided in Section 90 of the Public Service Staff Relations Act, an employee who feels that he or she has been treated unjustly or considers himself or herself aggrieved by any action or lack of action by the Employer in matters other than those arising from the classification process is entitled to present a grievance in the manner prescribed in clause M-38.05 except that,

(a) where there is another administrative procedure provided by or under any Act of Parliament to deal with

the employee's specific complaint, such procedure must be followed,

and

- (b) where the grievance relates to the interpretation or application of this Collective Agreement, the relevant Group Specific Agreement or an Arbitral Award, the employee is not entitled to present the grievance unless he or she has the approval of and is represented by the Alliance.*

M-38.10 An employee may present a grievance to the First Level of the procedure in the manner prescribed in clause M-38.05, not later than the twenty-fifth (25th) day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to grievance.

In support of his position, counsel for the employer submitted the following exhibits:

- E-1: Letter dated November 26, 1993 to R. Sauvé from Leigh Campbell.
- E-2: Memorandum dated October 17, 1990 to Denis Taillefer from Robert C. Sauvé.
- E-3: Letter dated August 15, 1991 to Gary Williamson from Robert C. Sauvé.
- E-4: Letter dated April 27, 1992 to Robert Sauvé from L. Campbell.
- E-5: Memorandum dated June 19, 1992 to Bob Beland from Robert Sauvé.
- E-6: Letter dated January 15, 1993 to R. Sauvé from L. Campbell.
- E-7: Memorandum dated March 15, 1993 to Bob Beland from Robert Sauvé.

The grievor's exhibits are as follows:

- G-1: Work Planning and Employee Appraisal Form, Administrative Support and Operational, for Robert C. Sauvé for the period January 1988 to December 1988.
- G-2: Letter dated December 6, 1994 to Robert Sauvé from Rick Huband.
- G-3: Letter dated January 27, 1995 to Rick Huband from Robert Sauvé.

- G-4: Memorandum dated March 29, 1993 to R. Sauvé from Leigh Campbell.
- G-5: Letter dated July 13, 1993 to L. Campbell from Donald Delorme.
- G-6: Letter dated December 15, 1995 to Robert Sauvé from Paul Wong.

No witnesses testified.

Arguments

The parties agreed that I should first deal with the employer's preliminary objections relating to timeliness and jurisdiction. Only if I found that these objections lacked merit would the grievance be heard on the merits.

Counsel for the employer argued that there had been no waiver of the employer's right to raise the question of timeliness. Mr. Sauvé had, for years, treated his situation as a job description and classification problem. When he received some satisfaction from his employer on these grounds but was not fully satisfied, he then sought to bring the present grievance under the collective agreement.

The employer argued that Mr. Campbell's letter (Exhibit E-1) referred to the fact that the employer could find no evidence to support Mr. Sauvé's claim "at this late date". The delay was a grave prejudice to the employer's rights. The persons who were Mr. Sauvé's superiors and colleagues are no longer at the Taxation Centre in Sudbury. Two have left the Public Service. None recollects anything other than a possible classification problem.

The employer objected to jurisdiction also on the ground that this is in reality a classification grievance which does not fall under the collective agreement.

The grievor's representative argued that the background of the grievance was an ongoing process and therefore the grievance was not untimely. Also, the question of timeliness had not been raised by the employer previously.

Decision

Mr. Sauvé is seeking compensation over and above his substantive position for services rendered during the period April 1986 to July 1990.

Since the period in question, Mr. Sauvé has had various communications with his Department about obtaining a higher rate of compensation for this period than he received at the time. It was not until December 16, 1993 that he filed a grievance after receiving a letter from the Chief, Property Management (Exhibit E-1).

Although some three and one-half years since the events giving rise to the grievance had elapsed when he filed his grievance, Mr. Sauvé did pursue his claim for more money assiduously over the years. Furthermore, at the second level of the grievance procedure, the employer awarded him acting pay for part of the period in question.

Although there may be some justification for the employer's concerns about establishing facts after so many years have elapsed, a concern that was expressed in the letter of Mr. Campbell (Exhibit E-1), the employer was certainly aware of the situation over the years. The investigation of the facts has been ongoing as shown by the exchange of letters over the years. Accordingly, I do not believe that the grievance is untimely but even, if it were, I am not prepared to entertain an objection to timeliness which is raised by the employer for the first time at adjudication. Not having raised the matter during the grievance procedure, the employer has waived its right to object to timeliness at adjudication.

The employer objected to jurisdiction also on the ground that this is in reality a classification grievance which does not fall under the collective agreement. In dealing with a fact situation similar to that of Mr. Sauvé, the Federal Court, Trial Division, in *Stagg and Canada (Treasury Board)* (1993), 71 F.T.R. 307, found that a pay issue was involved. I have reached the same conclusion here. It is also significant that during the grievance procedure the employer treated the grievance as a pay issue.

For all these reasons, I have jurisdiction to hear Mr. Sauvé's grievance on the merits. The parties will be advised in due course when this grievance will be heard on the merits.

**Rosemary Vondette Simpson,
Board Member**

OTTAWA, November 30, 1998.