

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

MARTIN W. FORTIER

Grievor

and

**TREASURY BOARD
(Transport Canada)**

Employer

Before: J. Barry Turner, Board Member

For the Grievor: Derek Dagger, Counsel, Public Service Alliance of Canada

For the Employer: Robert Smart

Heard at Regina, Saskatchewan,
October 21, 1997

DECISION

Martin Fortier, an equipment operator, Airport group, General Labour and Trades, GL-MDO 6 classification level, Transport Canada, Regina, Saskatchewan, is grieving that his salary was not protected under the Work Force Adjustment Directive (WFAD) when he relocated from Yellowknife to Regina in 1995 after being declared surplus in Yellowknife due to the devolution of the airport to the Government of the Northwest Territories.

The grievor was at all relevant times subject to the provisions of the Master Agreement between the Public Service Alliance of Canada and the Treasury Board dated May 17, 1989. Clauses M-37.01 and M-37.03(28) of the Master Agreement provide:

M-37.01 Agreements concluded by the National Joint Council of the Public Service on items which may be included in a collective agreement, and which the parties to this agreement have endorsed after December 6, 1978 will form part of this agreement, subject to the Public Service Staff Relations Act (PSSRA) and any legislation by Parliament that has been or may be, as the case may be, established pursuant to any Act specified in Schedule III of the PSSRA.

...

M-37.03 The following directives, policies or regulations, as amended from time to time by National Joint Council recommendation and which have been approved by the Treasury Board of Canada, form part of this collective agreement:

...

(28) Work Force Adjustment Policy.

His grievance reads:

I grieve that my salary was not protected after I was declared surplus in Yellowknife, NWT and was appointed to a position in Regina. As per NJC, Workforce Adjustment Directive, Vol. II, Workforce Adjustment Employee Information kit (Feb. 1994) Public Service Commission of Canada (information Booklet) and all other related documents.

He is requesting the following corrective action:

That I be paid the rate of pay that I received in Yellowknife NWT.

I am being asked to decide if the WFAD was correctly applied by the employer. The hearing lasted one half day with only the grievor testifying. An Agreed Statement of Facts and thirteen appendices were entered as exhibits.

Summary of Evidence

The Agreed Statement of Facts reads as follows:

The following facts are agreed to by the parties with respect to the grievance of Mr. Martin W. Fortier.

1. *Mr. Fortier is employed by Transport Canada in Regina as a GL-MDO 6.*
2. *As such, he is covered by the General Labour and Trades (supervisory and non-supervisory) Collective Agreement between the Treasury Board and the Public Service Alliance of Canada.*
3. *Mr. Fortier formerly occupied position ACE-1515, classified at the GL-MDO 6 group and level (Appendix A) in Yellowknife.*
4. *Mr. Fortier was notified on December 30, 1994 that his position was being transferred to the Government of the Northwest Territories and he was therefore declared to be a surplus employee (Appendix B).*
5. *Mr. Fortier was entitled to the benefits of the Work Force Adjustment Directive of December 15, 1991, and as such, as per Part V of said directive, he was entitled to salary protection in the event he was appointed to a lower-level position (Appendix C).*
6. *Mr. Fortier was offered an appointment on January 26, 1995 to position ACW-7287, at the GL-MDO 6 group and level, in Regina, Saskatchewan, which he accepted on January 27, 1995 (Appendix D).*
7. *Mr. Fortier's appointment was confirmed in the Report on Staffing Transaction with effect from February 20, 1995 at a salary of \$12.36 per hour (Appendix E).*
8. *Position ACW-7287 was classified by the department at the GL-MDO 6 level as per the Classification Action Form (Appendix F).*
9. *The collective agreement for the General Labour and Trades group provides for regional (i.e. zones) rates of*

pay, with employees in the NWT being in Zone 1, and employees in Saskatchewan being in Zone 7 (Appendix G).

10. *The rate of pay for a GL-MDO 6 in Zone 1 is \$15.19 per hour, while the rate of pay in Zone 7 is \$12.36 per hour (Appendix H).*

The above facts are agreed without limiting the right of either party from presenting additional evidence or facts.

Agreed to this 21 day of October, 1997.

Mr. Dagger explained at the outset the Yellowknife airport was privatized. Mr. Smart agreed. The grievor was declared surplus in December 1994 (Appendix B) under section 6.1.1 of the WFAD that reads:

Privatization

6.1 Surplus employees

6.1.1 Employees declared surplus as a result of a privatization are guaranteed an offer of appointment on an indeterminate basis to another position in the Public Service within their headquarters area, either at their current level or with salary protection, where necessary.

The grievor accepted an offer of employment (Appendix D) in Regina on January 27, 1995. His last pay stub from Yellowknife (Appendix I) shows he was paid at \$15.19 per hour, whereas his first pay stub in Regina (Appendix J) shows he was paid at \$12.36 per hour, a drop of about twenty per cent. His classification remained the same but he moved from Zone 1 to Zone 7 (Appendix H) and ended up with a lower rate of pay. Mr. Dagger claims that the grievor's salary was therefore not protected. He reminded me that I should interpret the WFAD as the National Joint Council (NJC) has done in the past, that is interpret the intent of what was meant to happen. He added that in Mr. Fortier's case, the NJC was not able to reach a decision; hence, this appearance before the Board.

1. Martin Fortier testified that the Yellowknife airport was indeed privatized, that he was declared surplus and offered a position in Regina that he accepted.

He accepted the Regina position based on what he read in Appendix K, written by the Public Service Commission under Pay, point 1. that reads:

PAY

1. *If you are appointed to a position at the same group and level (e.g. CR-4 to CR-4), your rate of pay does not change.*

Mr. Fortier expected \$15.19 per hour in Regina. He also referred at the time to Appendix L written by the PSAC, Salary Protection, question 9 and answer 9, that read:

Q 9. As a GL&T, what is the effect on my salary if I accept a position in a different zone?

A 9. The intent is that salary protection is to keep you from going down, not to hold you at a lower rate. Your salary would rise if the zone had higher pay rates.

He received northern allowances at the \$15.19 Yellowknife basic pay rate but no allowances at the new Regina rate of \$12.36.

During cross-examination, Mr. Fortier said that he received a copy of the WFAD at the time he was declared surplus and was aware of Part V, Salary protection (Appendix C) that reads in part:

Salary protection***5.1 Lower-level position***

5.1.1 Surplus employees and laid-off persons appointed to a lower-level position under this directive shall have their salary and pay equity equalization payments, if any, protected in accordance with the salary protection provisions of their collective agreement, or, in the absence of such provisions, the appropriate provisions of the Regulations Respecting Pay on Reclassification or Conversion.

He said he read in January 1995 the reference on Appendix D his letter of offer of appointment to a position in Regina regarding “Salary: As per transfer regulations” and understood this to relate to the PSC and PSAC earlier references (Appendices K and L respectively). He assumed his Yellowknife rate of pay would not change in Regina even though he admitted he spoke with his future supervisor, Denis Sandoff, in Regina more than once who told him his new rate would be \$12.36/hour prior to signing the job offer on January 27, 1995.

Argument for the Grievor

Mr. Dagger argued that I must look at the intent of the parties in this matter as much as the words in the WFAD before me. He argued the employer's interpretation of the WFAD in this case is absurd, and pictured a hypothetical situation of Mr. X at a level 6 going from Yellowknife to Regina at one level lower, he would get salary protection at \$15.19/hour according to Part V of the WFAD, and the PSC document Appendix K, Pay, point 2. that reads:

2. *If you are appointed to a lower level position (e.g. PM-4 to PM-3), you will continue to receive all the pay entitlements applicable to the position from which you were declared surplus in accordance with part V of the Work Force Adjustment Directive.*

He referred to Appendix M, the Memorandum of Understanding, Part I, point 2 and argued what the parties intended throughout was to maintain a surplus employee's income level. Part I, point 2. reads:

PART I

Part I of this Memorandum of Understanding shall apply to the incumbents of positions which will be reclassified to a group and/or level having a lower attainable maximum rate of pay after the date this Memorandum of Understanding becomes effective.

...

2. *Downward reclassification notwithstanding, an encumbered position shall be deemed to have retained for all purposes the former group and level. In respect to the pay of the incumbent, this may be cited as Salary Protection Status and subject to Section 3(b) below shall apply until the position is vacated or the attainable maximum of the reclassified level, as revised from time to time, becomes greater than that applicable, as revised from time to time, to the former classification level. Determination of the attainable maxima rates of pay shall be in accordance with the Retroactive Remuneration Regulations.*

Section 3. (b) referred to above reads:

3. (a) ...

- (b) *In the event that an incumbent declines an offer of transfer to a position as in (a) above in the same geographic area, without good and sufficient reason, that incumbent shall be immediately paid at the rate of pay for the reclassified position.*

He argued that Mr. Fortier did not go to a lower level position, but did go to a lower rate of pay, and the parties could not have under any circumstances intended this anomaly since it would mean the whole system would have a built in inequity. He said in fact an employee's salary could rise if he or she went to a zone that had a higher rate of pay as is explained in Appendix L, the PSAC publication.

He therefore asked me to allow the grievance and to remain seized pending resolution of back pay.

Argument for the Employer

Mr. Smart agreed that the facts are not in dispute but that subsection 5.1.1 of the WFAD needs an answer. He said however that the hypothetical case Mr. Dagger pictured is not before me. He agreed the grievor lost money, but that Mr. Fortier also knew from Mr. Sandoff before he accepted the position in Regina what the pay rate would be. He agreed the grievor has relied on PSC and PSAC information in his reasoning, but these documents are not the WFAD that I must only interpret, since the WFAD forms part of the Master Agreement between the bargaining agent and the employer.

He agreed this case is an anomaly but it can only be corrected through collective bargaining and not by me.

Mr. Smart argued the GLT group has regional or zonal rates of pay prescribed in their collective agreement unlike CR's or PM's who have the same rates all across the country. Mr. Fortier's move from Zone 1 to Zone 7 and at a different rate of pay is not a change of classification. Even though Mr. Smart expressed sympathy for Mr. Fortier's position, the grievor's rate of pay is in accordance with the new zone he moved into and should not be altered.

Decision

Although the parties spoke of “privatization” of the airport at the outset of the hearing, I believe that this grievance relates to a “devolution” as defined on page 4 of the WFAD as the grievor’s position was transferred to the Government of the Northwest Territories according to the Agreed Statement of Facts:

*A **devolution** occurs where a departmental operation is either:*

- transferred from the Public Service to any other part of the federal government (such as another part of the Public Service of Canada, a Crown corporation or agency), to another level of government (such as provincial, territorial, regional or municipal), to a local airport authority, or to an aboriginal group (such as a band or tribal council), without any further responsibility on the part of the Public Service*

or

- is performed on behalf of the Public Service by one of the above entities.*

Where an operation is transferred or performed under these circumstances, the operation is deemed, for the purposes of this directive, to be discontinued, resulting in a work force adjustment situation;

Privatization is defined on page 6 of the WFAD as:

***Privatization** occurs where a department discontinues both responsibility for and delivery of an operation such that, simultaneously and by prior agreement with the department, a private sector organization assumes delivery of that operation. Where an operation is transferred under these circumstances, the operation is deemed, for the purposes of this directive, to be discontinued, resulting in a work force adjustment situation;*

In either case however, a work force adjustment situation arises.

In December 1995 the Executive Committee of the NJC could not reach a decision in the matter before me. I too, have had some difficulty in deciding the matter.

However, I must interpret and apply the clear meaning of the words of the collective agreement unless there is ambiguity. I do not believe there is any. Mr. Smart is correct; I cannot look to extrinsic evidence to determine the intention of the parties and must use as my reference the WFAD in particular Part V, subsection 5.1.1, that reads:

Salary protection

5.1 Lower-level position

5.1.1 Surplus employees and laid-off persons appointed to a lower-level position under this directive shall have their salary and pay equity equalization payments, if any, protected in accordance with the salary protection provisions of their collective agreement, or, in the absence of such provisions, the appropriate provisions of the Regulations Respecting Pay on Reclassification or Conversion.

This subsection does apply, as is referred to in the Agreed Statement of Facts, but since Mr. Fortier was not appointed to a lower-level position it cannot provide him with the remedy he is seeking. He was appointed to the same level position, that is, from a GL-MDO 6 in Yellowknife to a GL-MDO 6 in Regina. This re-appointment occurred because the Yellowknife airport was devolved as I indicated at the beginning of this decision and was not privatized as submitted by the parties.

This being the case, the Privatization subsection 6.1.1 of the WFAD cannot apply. Even if it did, the grievor's requested remedy could not be granted since he was appointed in Regina to his "current level" from Yellowknife; he would only have been entitled to salary protection if he had been appointed to a position other than his "current level".

For these reasons, this grievance is denied.

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

OTTAWA, December 5, 1997.