



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**DORIS RONDEAU**

Grievor

and

**TREASURY BOARD  
(Revenue Canada - Taxation)**

Employer

*Before:* J. Barry Turner, Board Member

*For the Grievor:* Barry Done, Public Service Alliance of Canada

*For the Employer:* Gabriel Terkel, Counsel

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Heard at Ottawa, Ontario,  
December 17 and 18, 1996.

## DECISION

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Doris Rondeau, a Problem Resolution Program Officer, PM-02 classification level, Assessment and Collections, Revenue Canada, Taxation, Ottawa, Ontario, is grieving the employer's failure to provide her with a complete and current job description.

Her grievance dated March 20, 1995 reads:

*I grieve management's failure to provide me with a complete and current statement of the duties and responsibilities of my position, including the classification level and the point rating allotted by factor to this position, as is my right, upon written request (which I have made), according to Article M-32.01 of my collective agreement.*

Clause M-32.01 of the Master Agreement between the Treasury Board and the Public Service Alliance of Canada, signed on May 17, 1989, reads:

### STATEMENT OF DUTIES

*M-32.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his position, including the classification level and, where applicable, the point rating allotted by factor to his position, and an organization chart depicting the position's place in the organization.*

The grievor is requesting the following corrective action:

*I wish to have a complete and current statement of the duties and responsibilities of my position, including the classification level and the point rating allotted by factor to this position, as is my right, upon written request (which I have made) according to Article M-32.01 of my collective agreement.*

The hearing lasted two days with eight witnesses testifying and twenty-nine exhibits were submitted into evidence.

### Jurisdictional Arguments

Mr. Terkel argued that my authority in this matter could only begin on February 20, 1995 when the grievor accepted her PM-02 position and could not extend to any retroactive period, since retroactive authority is not covered under the *Public Service Staff Relations Act (PSSRA)*. He reminded me that the grievor kept her former IS-02 substantive position until February, 1995, when she became a PM-02.

He also argued, that according to the Master Agreement, clause M-38.10, and the decision of the Federal Court of Appeal in The Queen (National Film Board) v. Coallier et al. (Court file A-405-83), (unreported), any resolution to the matter before me is confined to a twenty-five day period prior to the date of her grievance.

Clause M-38.10 reads:

*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 is notified orally or in writing or on which he first becomes aware of the action or circumstances giving rise to grievance.*

Mr. Terkel argued that, if I examine the evidence that will come before me, I will conclude that the employer already granted the grievor her request by giving her a complete and current job description in March, 1995. He reminded me that pursuant to section 7 of the *PSSRA* the assignment of duties to and the classification of positions fall within the exclusive prerogative of the employer and I have no jurisdiction to assign duties to or classify a position. He believes the grievor is actually trying to convert her grievance into a classification matter from a PM-02 to a PM-04 level. Section 7 reads:

*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.*

He added for my information that, after her grievance was submitted, Ms. Rondeau went on educational leave; she then sought care and nurturing leave until August, 1997. She has therefore been away from her workplace most of the time during the grievance process.

Counsel referred me to Canada (Attorney General) v. Dawidowski (1994), 88 F.T.R. 234; Chong et al. v. Canada (Attorney General) et al. (1995), 104 F.T.R. 253; Gust (Board file 166-2-79) and Sinclair v. Canada (Treasury Board) (1991), 137 N.R. 345, 92 C.L.L.C. 14,008.

Regarding my jurisdiction, Mr. Done said the issue is much simpler in the opinion of the bargaining agent since he believes the employer did not present a

complete and current job description to Ms. Rondeau. He argued that we are not dealing with an appointment or retroactive staffing action but just an incomplete job description. We are also not dealing with a classification review; that, he agreed, is not within my jurisdiction. He said there was a desk audit done for the grievor, not to determine classification, but to determine the duties being done by her. Regarding the Coallier (supra) decision, Mr. Done argued that we are not looking at a pay matter. Mr. Done argued that he will show me that estoppel, job security, anti-union bias, retribution and equitable principles all play a role in this matter.

I decided to reserve on the question of jurisdiction and to proceed to hear the case on its merits.

### Summary of Evidence

1. Doris Rondeau joined Revenue Canada in January, 1988, as an Information Specialist (IS-02), Problem Resolution Program (PRP), Communications Branch. The PRP was transferred to the Client Assistance Directorate (CAD) from Communications in January, 1994 when she became a Problem Resolution Officer. She moved with it, although her move was never made official in writing. Her new supervisor, Mr. Tony Prosia, asked her to write a job description for her new work area since her classification was going to have to be switched from an IS-02 to a PM-02. There were no IS's in the CAD. She wrote a job profile (Exhibit G-1), around mid-June, 1994, and gave it to Mr. Prosia who sent it to a classification officer, Rosaire Boulanger. The grievor, Mr. Prosia and Mr. Boulanger met in July, 1994 to review Exhibit G-1. Because it was deemed to be a PM-04 job description, it had to be watered down to a PM-02 level as is shown in Exhibit G-2. What came out in the end was a job description signed by H el ene Beauchemin, Director General, CAD, in November, 1994 (Exhibit G-3), that was sent for classification.

The grievor said she and Mr. Prosia discussed what was going to become of her new position. She also discussed it with Mary Elizabeth Trueman, a local union representative, in the fall of 1994. There were about five meetings in the fall of 1994 to review Exhibit G-3 before the grievor signed it on February 20, 1995 in the presence of Mr. Prosia, Rick Borden, Personnel Department, Mary Elizabeth Trueman and H el ene Beauchemin. She testified she was told that, in order to put her into the PM

category, it would have to be at the PM-02 level. If she did not sign the new job description at the PM-02 level, she would be declared surplus, since according to Mr. Borden her old IS-02 position was gone.

The grievor identified a memorandum she sent to Mr. Prosia dated November 2, 1994, regarding confusion surrounding her new job description and its classification level at the PM-02 or PM-04 level (Exhibit G-4). Exhibit G-4 indicated her desire to seek union assistance. He never responded to her in writing but questioned her as to whether or not it was necessary to get the union involved. Ms. Rondeau identified a list of work she had done between January and September, 1994 (Exhibit G-5) that she sent to Mr. Prosia. He never told her not to do any of the work she described in Exhibit G-5.

The grievor identified a memorandum from Human Resources (Exhibit G-6) dated November 18, 1994 sent to the Assistant Deputy Minister (ADM), Mr. Burpee, that refers to the grievor's transfer to CAD and reads in part on page 2:

*... This transfer does not leave a vacancy within Communications Branch and should a priority be named into this newly created PM-02 position, we would have to declare Doris surplus.*

The ADM questioned this. The grievor added that Margaret Lapensée, who had also transferred to the CAD, was also anxious to know what was going to happen to her. Ms. Rondeau identified a plan of action (Exhibit G-7) prepared by Mr. Prosia for both herself and Ms. Lapensée that reads in part:

5. *establish a PM 4 and PM 5 job description for PRP in CAD.*

The witness identified the basic qualifications for a Problem Resolution Officer (PRO) that she wrote in the fall of 1994 (Exhibit G-8), as well as some notes tabled by Rick Borden (Exhibit G-9) from a December 22, 1994 meeting between the grievor, Mr. Borden, Mr. Prosia, Hélène Beauchemin and Mary Elizabeth Trueman. Exhibit G-9, paragraph 3, reads in part:

*Current information indicates that the employee's IS-02 position of projects officer no longer exists in the Communications Branch. ...*

The grievor said her understanding was that she must either accept the PM-02 position or be out of work; therefore on February 20, 1995 she signed her new offer as a PM-02 (Exhibit G-10). At this time, the grievor did not believe that her job description (Exhibit G-3) reflected the major duties she was performing; for example, she said she spent a lot of time consulting with field offices to monitor the effectiveness of the PRP as she wrote in the job profile (Exhibit G-1). This was not in Exhibit G-3. She added that “Element 1: Responsibility for Work of Others”, page 2, Exhibit G-2, was also not in the final job description.

Ms. Rondeau identified another example of work she did while in the Communications Branch and in the CAD regarding producing PRP budget figures (Exhibit G-11) since no one else could do it, as well as a PRP Progress Report that she and Margaret Lapensée wrote (Exhibit G-12), and a request for information for Part III of the estimates (Exhibit G-13).

Ms. Rondeau worked on these budgetary items before and after her grievance date as shown in Exhibit G-14. She wrote this work into the job description she prepared in Exhibit G-1.

She identified a user manual that she helped produce in 1993 (Exhibit G-15) as work she was still expected to perform but there was no mention of making changes to software in the final job description (Exhibit G-3). Exhibit G-3 only talks about answering inquiries. Ms. Rondeau said she worked on a user manual for PRP software for at least four months before it was sent out in December, 1994 or January, 1995 (Exhibit G-16). She also identified various exhibits that showed she did a lot of PRP software work (Exhibit G-17) as the client contact person and as the person responsible for Statistical Analysis System (SAS) related activities (Exhibit G-18). She in fact was one presenter at an event in Cornwall regarding the SAS, and at Expo Innovation '94 (Exhibit G-19). She would prepare and present something as the need arose. Ms. Rondeau identified an additional series of seven duties that she performed (Exhibit G-20) that she believed were not outlined in the final job description (Exhibit G-3).

Ms. Rondeau testified that during a phone conversation with Mr. Prosia on February 20, 1995, around 1600 hours, he told her he could not have admitted all that

she really did at any of their meetings where a union representative attended and that, if she had not squawked to the union, she would have been given what she wanted. The grievor was upset by this and called Mary Elizabeth Trueman for advice who told her to make notes right away.

Ms. Rondeau made a written request for a current job description from Mr. Prosia on March 20, 1995 (Exhibit G-26). He responded on March 21, 1995 (Exhibit G-27) with a copy of Exhibit G-3. She added that he was prepared to give her a list of extra duties she was performing but they never discussed these.

The grievor said that after she submitted her grievance she met with a Paul Lamont in June, 1995 who was doing a desk audit of her duties. She identified her own notes from this meeting as Exhibit G-21. She was concerned about what he did not ask her; his questions were so narrow she could not expand on her duties. She felt he was lecturing her. She saw his report (Exhibit G-22) and responded to it (Exhibit G-23) in order to give a true picture of her job. She sent a copy to the ADM, Mr. Burpee, who was surprised and said he would consider her response.

During cross-examination, Ms. Rondeau said that the reason PRP moved from Communications to the CAD was because the new Director General in Communications requested this to happen. She was told she had to move but did not seek union advice at the time. She added that while she was in Communications she had indicated she wanted an IS-03 position. She also requested a job description at the time but never got it. When she first arrived in the CAD she spoke with Tony Prosia to try to find out where she belonged. After she wrote the job description for her new position, even though it was categorized as a PM-04 position, and was watered down, she said Mr. Prosia told her that the work was at a PM-04 level but in order to effect her transfer she must be classified at the PM-02 level. She added that she still did a lot of extra duties at his request; she reiterated that the job description she signed on February 20, 1995, even after many meetings in the fall of 1994, still did not reflect her full duties. She testified that between February 20 and March 20, 1995, she performed the key activities that were missing from the signed job description and listed on page 1 of the job profile she wrote (Exhibit G-1). She added that "a good sixty percent of my time is spent providing technical and procedural support to the field offices."

Ms. Rondeau could not recall Mr. Prosia ever telling her that the additional duties she was performing were not her responsibilities. She added that she was concerned with Mr. Lamont's desk audit exercise because she wanted him to ask her the right questions even though she is not a classification officer.

The grievor said she did not complain about Mr. Prosia's comment about "squawking to the union" because she felt one grievance was enough.

2. Terry O'Connor, a Revenue Canada Taxation employee, worked with the grievor to some extent when she was in the Communication Strategy Division (CSD), and dealt with her when she moved to the CAD regarding the PRP program in terms of the history of how resources were allocated (Exhibit G-24). He said she was the keeper of information regarding how full-time equivalent (FTE) salary dollars were allocated to the regions and helped provide information to him especially during busy times in March and in the fall.

3. Margaret Lapensée worked in the Communications Branch as an IS-03 with the grievor when the PRP was located there before moving over to the CAD along with Ms. Rondeau. She identified her letter (Exhibit G-25) dated April 24, 1995 that explains what some of the grievor's duties were with the PRP. She added that her own substantive position at the CAD became a PM-04 in the fall of 1994. Her former IS-03 position in Communications was filled as soon as she became a PM-04. The witness added that the PRP reports were prepared in Communications only and not in the CAD. She said the grievor worked as well with SAS and that Ms. Rondeau was involved as a preparer and presenter for the PRP at Expo Innovation '94.

During cross-examination, Ms. Lapensée said Mr. Prosia never asked her to write a job description, nor did she ever tell him that the grievor was doing more than she should do. She added that, while in Communications, there was a conflict between the grievor and her Chief but the witness did not know at the time that Ms. Rondeau wanted to be in an IS-03 position. When asked if Ms. Rondeau did basically the same work in the CAD, the witness responded: "Basically yes, it was supposed to be the same".

4. Mary Elizabeth Trueman was a Communication Research Officer, Communications Branch, IS-04 level in 1994/95 and was the union steward in



1994/95 who provided some advice to the grievor at meetings with Mr. Prosia. She attended the December 22, 1994 meeting with Mr. Prosia, the grievor, Mr. Borden, and Ms. Beauchemin. She said Mr. Borden submitted a document at the meeting that appeared to indicate there was no longer an IS-02 position in the Communications Branch for Ms. Rondeau. He indicated that if she did not accept the PM-02 position, she would become an affected employee.

Ms. Trueman said the grievor completed the first draft of her job description (Exhibit G-1) and it came up during five meetings with Mr. Prosia between December 1994 and February 1995. She added that he said he had reviewed it before it was sent for classification to Mr. Boulanger; Ms. Trueman indicated that at one meeting, Mr. Prosia seemed confused when he asked the grievor if she wanted her official job description and a list of other duties she was doing. She said the grievor responded that was the issue to be resolved.

The witness said the issue of a desk audit kept coming up. She made inquiries about the desk audit after she saw it because she felt it had been arbitrary and not professional enough. Neither Ms. Trueman, nor a Human Resource adviser, Ms. L. Maher, could find a reference to departmental policy on desk audits.

During cross-examination, Ms. Trueman said that she was aware of all the circumstances that led to the grievor's move to the CAD. At the time, they had just started to combine Customs with Taxation; therefore the Communications Branches had been combined. Some jobs disappeared and some were reclassified; this benefited some employees and not others. She added that the grievor was both fearful and hopeful regarding potential change. She said that Mr. Prosia's offer to the grievor in December 1994 did not seem to fit into the Workforce Adjustment Directive since Ms. Rondeau's position had gone elsewhere in head office. Ms. Trueman said she never knew if the grievor was doing the same work in the CAD that she did in Communications. She added that Ms. Rondeau's position may even still exist in Communications. She never discussed watering down the job description (Exhibit G-1) with Mr. Prosia.

5. Paul Lamont has been a Classification and Organization Advisor for almost six years (Exhibit E-1). He noted that Classification is distinct from Human Resources.

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He did an on site review and desk audit of the grievor's position at the request of Mr. Burpee on June 14, 1995, when he met with her to get documentation about her duties and her job description (Exhibit G-1). He also talked with Mr. Prosia and Nancy Marley-Clarke, a Senior Officer in the CAD, to get their interpretation of her duties. Both of them said Ms. Rondeau was expected to do only what was in the departmental job description (Exhibit G-3). Mr. Lamont said Ms. Rondeau claimed there were elements of her duties that were not in the job description which she had been given by Mr. Prosia (Exhibit G-3). Mr. Lamont attempted to clarify the missing elements but he could not find anything to support her allegations and so concluded in his report (Exhibit G-22) that was sent to Mr. Burpee who in turn gave a copy to the grievor. He added that Ms. Rondeau may have felt she was being underpaid which is a staff relations matter, not a classification one.

Mr. Lamont said that the grievor's reply to his report (Exhibit G-23) was responded to by him in a letter to Mr. Burpee (Exhibit E-2). Regarding Exhibit G-25, Ms. Lapensée's assessment of the grievor's performance and duties, Mr. Lamont said that this was her opinion and that Ms. Lapensée is not the grievor's supervisor; if indeed this assessment was true, he suggested that the grievor might be given acting pay for a period if needed.

During cross-examination by the grievor's representative, Mr. Lamont said he had never seen the grievor's notes about their June 14, 1995 meeting (Exhibit G-21). He felt the time of two and three quarter hours was not short for the desk audit and that this was not a classification investigation. He added Ms. Sue Cooper, on behalf of Mr. Burpee, asked him to do the desk audit. She did not say that if the job description was rewritten this would cause a staffing problem, nor would he (Mr. Lamont) have cared anyway. When asked why he did not speak to the grievor's co-workers as part of his investigation, Mr. Lamont said: "Because they cannot assign her duties, and maybe they were not doing what they were supposed to do either". He did not speak to Terry O'Connor or the computer staff either. He discussed with Mr. Prosia the request for the grievor to do budget allocation work, but this is included in the PM-02 job description (Exhibit G-3). Mr. Lamont added that he wanted Mr. Prosia to tell him if the grievor was doing extra duties as indicated in Exhibit G-1. He said, if she was, Ms. Rondeau should have told Mr. Prosia that others were assigning her duties and asked him to intervene.

Mr. Lamont knows Mr. Boulanger but he had never seen the suggested watered down job description (Exhibit G-2), nor did anyone tell him that, if the grievor's classification actually came out at the PM-04 level, this would cause a staffing problem. He did not see anything that would have warranted rating the proposed job description (Exhibit G-1) as a PM-04. It was also never classified.

6. Tony Prosia, Manager, Business Programs in what is now called the Client Services Directorate, has worked at Revenue Canada since 1981. When the PRP workload was transferred from Communications to the CAD, he interviewed the grievor and Ms. Lapensée before their arrival. When the grievor came from Communications to the CAD in mid-January 1994, there was confusion regarding roles and duties since the PRP was being shed from Communications. He could not recall seeing a stated decision on the relocation of workloads but Ms. Rondeau's main workload was to receive data from the field offices on diskette and compile this information to give a national picture. He said she understood the PRP well and would help the field offices rectify glitches.

Mr. Prosia added that, with the departmental consolidation going on, receiving an IS-02 was inconsistent with the other classification levels in the CAD. Margaret Lapensée went from an IS-03 to a PM-04 but they had to work on the job description for Ms. Rondeau to go from an IS-02 to a PM-02. She wrote the first draft of this new job description at his request.

Mr. Prosia described the grievor's five key activities of the draft job description (Exhibit G-1) as being part of the overall vision of a larger collage of activities within the CAD. These five key activities are:

*Establishing policies, goals and guidelines for the Problem Resolution Program to ultimately improve client services.*

*Analyzing and interpreting the results achieved by the Problem Resolution Program in the field offices.*

*Consulting with field offices to monitor the effectiveness of the Problem Resolution Program to ensure that the desired results and objectives are achieved and recommending corrective action, if necessary.*

*Determining resource needs and allocations for the Problem Resolution Program activities in the field and headquarters.*

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*Providing technical and procedural support to the field offices.*

He said some of these were given to Margaret Lapensée who became an acting PM-05. He sent Exhibit G-1 as it was originally drafted to the classification section for their first impression. Rosaire Boulanger responded saying he felt it was a PM-04 job description. According to Mr. Prosia, for Ms. Rondeau “to safely land in the CAD what we needed was a PM-02 level since I had heard her IS-02 position was gone from Communications”. He felt that removing some elements from Exhibit G-1 would not hurt her position and added: “We did that since we wanted to build a PM-02 job that described what she did and give her a job”. He ended up with Exhibit G-3, the alleged watered down version of Exhibit G-1; he believed that Exhibit G-3 actually described what the grievor did. He said Ms. Rondeau felt Exhibit G-3 would hurt her intended career path to get from a PM-02 to a PM-04.

The witness added that Ms. Rondeau and Ms. Lapensée brought some unresolved issues with them to the CAD when they left the Communications Branch.

Mr. Prosia testified that during many discussions with Ms. Rondeau about what she thought she was doing, he disagreed with her. He respects her but said she was there to give data and not to do resourcing. He did not discourage her from getting involved in other initiatives, like a position paper, but such initiatives were never formally approved as part of her workload. Regarding the computer manual project, Mr. Prosia did not know how she was qualified to do this since he relied on information technology experts for this. He added: “this enlarged role for her was in fact flattering”. He also said that she did contribute to a presentation as a team member and participated in the Expo '94 Innovation where she spoke about the PRP.

None of the employees he supervised ever brought to his attention the fact that Ms. Rondeau was doing more than she was supposed to do. He was taken aback by her grievance because he believed he had done a lot to help her in her new work location. He could not recall the alleged comment from him that she should not have “squawked” to the union. He said, if Ms. Rondeau had actually received what she wanted, she would have been out of a job since the CAD could not accommodate the PM-04 level.

At the first level of the grievance process Mr. Prosia felt he had done his part by giving her the PM-02 job description (Exhibit G-3).

Regarding his alleged comment about giving her a list of additional duties, Mr. Prosia said: “this was merely an attempt to paraphrase what she was really after”, that is, recognition of work which she claimed she was doing but which the employer had not assigned to her. He was interviewed by Paul Lamont as part of the desk audit but he really did not understand where Ms. Rondeau was going with the whole issue.

During cross-examination, Mr. Prosia said he was not troubled by the first draft of the job description (Exhibit G-1) since he expected more dialogue on it. He was not alarmed when he heard Mr. Boulanger say it read as a PM-04 job description. He wanted to tailor it to meet the needs of the CAD.

Regarding Exhibit G-4, the grievor’s memorandum to Mr. Prosia regarding her transfer from Communications Branch to the Client Assistance Directorate, and the reference in paragraph two to “my real duties”, he said that if he did say this to her, he was merely talking through his hat. He did not write a response to Exhibit G-4 because they were having lots of discussions about the matter. Regarding Exhibit G-5, the grievor’s summary of her work report for January to September, 1994, Mr. Prosia said the grievor’s version of what she did differed from his. Again, he said they had discussions about this and they disagreed. The witness said some elements of Exhibit G-1 had to be removed in order to make her job a PM-02 level; he stated that he “was worried about the classification process even being able to make her position a PM-02”. He agreed that he said to Mr. Boulanger that it had to be tailored to a PM-02 level.

When asked if the grievor was under the gun to sign her CAD job offer in February 1995, Mr. Prosia said: “There was not any other position to give her but we did not intend to box her into a corner”.

As part of a wider vision for the PRP within the CAD, Mr. Prosia agreed he wrote Exhibit G-7, a Plan of Action, that shows a desire to create a PM-04 and a PM-05 job description. He gave this to both Ms. Rondeau and Ms. Lapensée when they first arrived. He added that the grievor feared the PM-03 stage between a PM-02 and a PM-04 since it was a technical level that needed knowledge of the *Income Tax Act*. He

added that Ms. Rondeau is, “a bright lady with a good work ethic”, and he has a high regard for her.

Mr. Prosia could not recall his alleged comment on the phone to Ms. Rondeau about her “squawking” to the union, nor could he remember exactly what he said to the grievor and Ms. Trueman on March 20, 1995 about a list of additional duties.

7. Nancy Marley-Clarke, currently a Senior Officer, Service Quality and Analysis, Client Services Directorate (the former CAD), knew the grievor as a Problem Resolution Officer who liaised with the Information Technology Branch and did data analysis of field information. The witness added that Ms. Rondeau also worked on a procedures manual. She was aware of the grievance but was not involved in it. She said Paul Lamont interviewed her to ask about the grievor’s duties and she described to him what the grievor did. She added, at budget time, the grievor provided her with some information, but overall she did not feel the grievor had exceeded the duties in her job description (Exhibit G-3).

During cross-examination, Ms. Marley-Clarke recalled getting a memorandum regarding PRP budget figures (Exhibit G-11) from the grievor that was actually done for Larry Pulcine, another manager. He wanted to know the cost of inquiries. The figures in Exhibit G-11 came from the grievor’s own system since the field offices had different projections from what Mr. Pulcine had.

8. Rick Borden, a Human Resource Advisor for nine years at Revenue Canada, has known the grievor since late December 1994. He said Mr. Prosia came to him for advice on how to solve the Rondeau personnel problem since she could not grieve a position she did not occupy. He gave Mr. Prosia two options: choose the PM-02 job, or stay at the IS-02 level even though they were not sure about the status of her IS-02 position back in Communications. He felt that she could have been offered the PM-02 position if she was declared surplus.

During cross-examination and after reviewing Exhibit G-6, the memorandum to Mr. Burpee about the grievor’s position being transferred, Mr. Borden agreed that her former IS-02 position was gone. He identified his memorandum (Exhibit G-9) regarding the offer of a PM-02 position to the grievor which indicates she could not transfer from an IS-02 to a PM-04 since this would be a promotion. Going from an

IS-02 to a PM-02 is a lateral transfer. He said she could not go off the books in one area until she accepted a position in another. If she did not accept a new position, she would become an affected employee, and then would need a reasonable job offer under the Workforce Adjustment Directive (WFA). If she refused an offer, she would remain an IS-02 for priority marketing under the WFA.

#### Argument for the Grievor

Mr. Done argued that he sees this as a simple case under clause M-32.01, whereby the grievor is entitled to a complete statement of her duties. Her employer has failed to provide this. He noted the employer relied on her to write her own job description (Exhibit G-1), and that Mr. Prosia had time to review it and remove what he felt was inaccurate. Instead, he argued, Mr. Prosia sent it to classification because he agreed with it and, when it came back as a PM-04, the employer became concerned. No one said she was not doing what was in Exhibit G-1, but they had to touch it up or water it down from a purely staffing point of view as Exhibit G-2 demonstrates.

Mr. Done argued that the employer should be estopped in this case. The grievor expressed her fears and concerns; Mr. Prosia said do not worry since he had a vision for the CAD as was partly shown in Exhibit G-7, number 5, where he intended to establish a PM-04 and a PM-05 for PRP in the CAD. Ms. Rondeau relied on this in good faith and to her detriment did nothing when she first came to the CAD. He argued the job description then was rewritten and came out as a PM-02 only to allow for a safe landing in the CAD to effect the transfer but did not really describe her duties.

He argued that the grievor then wrote a memorandum to Mr. Prosia (Exhibit G-4) in November, 1994, that suggested she wanted to bring in her union representative. This did not sit well with Mr. Prosia who later showed an anti-union sentiment. Ms. Rondeau paid a price for "squawking" to the union even though Mr. Prosia did not recall saying this. Mr. Done argued that there is now a growing gap between Mr. Prosia and the grievor.

Mr. Done argued that except for Exhibits G-9, G-10, G-21, and G-23, all other evidence supports the fact she was performing duties not listed in the final job

description (Exhibit G-3). Even though she did very well at the Expo '94 Innovations, the employer was only concerned about saving dollars.

He reminded me about the March, 1995 meeting between the grievor, Mary Trueman, and Mr. Prosia when he talked about the official job description plus a list of other duties; Mr. Done then asked me whom do I believe.

He argued that the PM-04 reference by Mr. Prosia in Exhibit G-7, when the grievor first came to the CAD, was an indication that her PM-02 level would be temporary at best. The grievor ultimately agreed to accept the PM-02 level position under duress since it became that job or no job.

He reminded me that the grievor never heard back from Mr. Prosia regarding her Work Report in October, 1994 for the first nine months of 1994, and that his silence must have meant his consent. He said the desk audit needed better balance since Mr. Lamont never talked to the computer personnel, to Ms. Lapensée or other co-workers.

Mr. Done said the grievor is not asking me for money, or to appoint her somewhere or to reclassify her. All she wants is fairness in the form of an accurate job description. Mr. Done requested that I order Revenue Canada to rewrite the job description properly.

#### Argument for the Employer

Mr. Terkel argued that, when the grievor moved from the Communications Branch to the CAD in 1994, the job description that she wrote was classified at a PM-04 level, two levels higher than her supervisor, Mr. Prosia, could justify. She was told to water it down to a PM-02 level and now claims that she was actually carrying out the role and duties of the original job description at a PM-04 level, even though she signed and accepted the PM-02 job offer on February 20, 1995 (Exhibit G-10), allegedly under threat that her former IS-02 position no longer existed. He argued no one told her to perform these extra duties and he pointed out that she was only told that she might have to be treated under the WFA. He added that she had been unhappy ever since she moved to the CAD but only grieved in March, 1995 because she believed she was still required to do other duties at the PM-04 level. He said that



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Ms. Rondeau did not ask for acting pay as she could have during this period if, in fact, she had been required to perform the duties of a higher classification level.

Mr. Terkel argued that in actual fact, since the grievor only signed her new job offer on February 20, 1995 and grieved on March 20, 1995, the employer's so-called silence in this matter cannot be argued especially since witnesses Lamont, Prosia and Marley-Clarke all disputed the grievor's allegations that she performed more duties than her job description called for. The period worth considering is therefore only one month. He reminded me that there is no evidence that the grievor was requested to perform any extra duties and that, on the balance of probabilities, I have no reason to prefer the grievor's evidence over management's, especially a classification expert like Mr. Boulanger. Mr. Terkel concluded that the allegation that Mr. Prosia told the grievor that she should not have "squawked" to the union comes at too late a date in the grievance process to be valid. It could not be remembered by Mr. Prosia in any event. Mr. Terkel asked me to dismiss the grievance.

Counsel referred me to the decisions in Littlewood et al. (Board file 166-2-16044); Lanouette (Board file 166-2-2230); and Taylor (Board file 166-2-20396).

### Decision

Mr. Terkel is correct to argue that it is not within my jurisdiction to adjudicate on a matter of classification or the assignment of duties. I do not intend to do this. However, after hearing the testimony and reviewing the evidence, it is clear to me that what I am being asked to decide is within my jurisdiction; that is, whether or not the grievor was provided with a complete and current statement of duties according to clause M-32.01 of her Master Agreement. Having considered all the evidence, I believe that she was. The burden of proof was on the grievor to establish that the employer required her to perform duties not contained in her job description. The evidence adduced by the parties has not persuaded me that this is so. In this regard, I agree with Mr. Lamont's overall assessment in his report (Exhibit G-22) and in his July 19, 1995 letter to Mr. Burpee (Exhibit E-2), since the grievor has not convinced me that she was performing enough of the key activities listed in her draft job description (Exhibit G-1) to warrant making changes to the final job description (Exhibit G-3). I also do not believe that her supervisor asked her to perform other responsibilities that

were above and beyond the call of duty. There also seems to be no departmental policy on desk audits that would provide guidance or a benchmark for comparative or assessment purposes of an employee's duties. It appears the practice is an ad hoc role for desk audits played in this instance by Mr. Lamont.

Although her colleague, Ms. Lapensée, was very supportive of Ms. Rondeau's situation, and went so far as to write a letter accordingly (Exhibit G-25), she was neither assigning duties to her as her supervisor, nor was she in a management position that might have allowed her to better know what duties had been assigned to Ms. Rondeau. I can give little weight therefore to her evidence. Even though I found Mr. Prosia to be very bureaucratic, nevertheless, he was in the best position to know what the grievor had done and what she was asked to do.

It is important to remember here that I am only seized with the issue of whether or not the grievor was given a complete and current job description, not how or why it was given to her. I believe Mr. Prosia had greater designs for the grievor over time as he indicated in the Plan of Action (Exhibit G-7). However, the duties the grievor was asked to perform and did perform, according to classification experts and her immediate supervisor, were essentially those written in Exhibit G-3. The confusion surrounding the existence or non-existence of the grievor's previous position in Communications must have caused her some anxiety but the broader decision to relocate the PRP in the CAD necessitated the movement of personnel and a new job description for the grievor.

As far as Mr. Done's estoppel argument is concerned, I do not accept this for two reasons. The grievor was presented with a job description, albeit one that she disagreed with but eventually agreed to sign; and secondly, the employer was helpful by keeping Ms. Rondeau employed after her IS-02 position in Communications disappeared, a fact that was confirmed by Mr. Borden. The alleged anti-union sentiment referred to by Mr. Done was never proven. In any case, I believe that the estoppel argument is directed to the assignment of duties to, and the classification of, the grievor's position. These matters do not come within my jurisdiction in light of section 7 of the *Public Service Staff Relations Act*, nor are they encompassed by clause M-32.01 of the Master Agreement.

The grievor's initiative to get involved in extra duties as an ambitious, dedicated public servant should be encouraged. When she returns to duty in August, 1997, it will probably be worthwhile to sit down with management to clearly define what is expected of her within the Client Services Directorate (formerly CAD) and how these expectations can be monitored and measured.

Therefore I conclude that it is clear to me on the balance of probabilities that the grievor was not performing duties that were beyond the agreed to job description (Exhibit G-3), nor was she asked to perform any of the extra duties she claims to have performed. She worked on special tasks from time to time, such as Expo Innovation '94, but even the grievor admitted that sixty percent of her time was spent providing technical and procedural support to the field offices, a key activity listed in Exhibit G-3.

Accordingly, for all these reasons the grievance is denied.

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

OTTAWA, February 20, 1997.