

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

EDWARD DEAN FOREMAN

Grievor

and

**TREASURY BOARD
(Indian and Northern Affairs Canada)**

Employer

Before: [Ken Norman, Board Member](#)

For the Grievor: [David Landry, Public Service Alliance of Canada](#)

For the Employer: [Robert Smart](#)

Heard at Whitehorse, Yukon,
December 18 and 19, 1997.

DECISION

Ed Foreman is a Lookout Person serving in fire towers located in the Yukon and working for Indian and Northern Affairs Canada. He comes before me carrying an argument on behalf of his co-workers that the Lookout Person job description fails to provide a complete and current statement of their duties and responsibilities. The background to his grievance is a story of some length involving Lookout Person dissatisfaction with a number of management decisions which affected them. To put it all into a nutshell, for the purposes of the case which unfolded, it very much sounded to me like a story of Lookout Persons feeling undervalued. Whether grievances under article M-32.01 of the Master Agreement between the Public Service Alliance of Canada and Treasury Board signed on May 17, 1989, allow me to comment on this central matter is the big question.

I heard detailed evidence from Ed Foreman, Marc Chouinard and their co-worker Lana VanVeen. However, I agree with Mr. Smart's contention that much of what they spoke to was argumentative and fell under the categories of job analysis or job evaluation. Supporting evidence was called on behalf of the grievors from Rene Pelkman, RMO for Tagish. Again, Mr. Pelkman dealt primarily with interpretive issues of job evaluation. The employer called one witness, Keith Kepke, Head Fire Management, who dealt with Ed Foreman's submissions.

Most of the work which led up to the grievance being filed was shouldered by Ed Foreman. For a year or so prior to the grievance being lodged he engaged in a series of written and oral exchanges with various persons in management on the subject of the existing Lookout Person job description and proposals for revisions to it. He went to the considerable trouble of actually drafting a complete job description for the employer's consideration. He had many, many points of disagreement with the employer's prior and current documents. Many of his bones of contention are matters of interpretation, style and emphasis. Others involve areas where Mr. Foreman's issues are not addressed at all by the employer's current job description. The union's evidence consistently endorsed the positions taken up by Ed Foreman throughout the review and consultation process which led up to the grievance being filed.

Arguments

On the whole, Mr. Landry and Mr. Smart spoke from quite different perspectives with regard to the evidence which was heard. Mr. Landry sought to have me accept Ed Foreman's draft of the job description as proof that the requirements of article M-32.01 of the Master Agreement had not been met by the employer. Mr. Smart urged me to see this line of argument as being a disguised attempt at getting me to influence what must be understood to be the grievor's real objective - to influence, in a particular direction, his job classification. In addition, Mr. Smart made the prior point that the grievance must be dismissed as there was proof that it was not preceded by a "written request" as demanded by article M-32.01.

Reasons for Decision

With regard to the employer's preliminary objection that this grievance is not properly before me because there was no "written request" proven, as called for by the initial words of article M-32.01, I accept the union's countering estoppel argument. On June 5, 1995, C.S. Diaz, Senior Staff Relations Officer, with Indian and Northern Affairs Canada, authored a letter to Jim Brohman, Union Representative, which stated, in part:

For the past two years, Towerpersons in this Region have been filing grievances alleging that their current job descriptions (GS-PRC-02) are not complete and do not comply with Article M-32.01 of the Master Agreement (PSAC).

As per my FAX to you dated May 26, 1995, I am asking that all grievances pertaining to the job description for Towerpersons be put in abeyance until a decision is reached at the final level on Ed Foreman's grievance, (that is, YUK-NAP-94/95). That decision would apply to all Towerpersons.

I read this letter as a joint commitment of the parties to resolve this long-standing issue, under article M-32.01, involving several persons via the vehicle of Ed Foreman's grievance. On behalf of the union, Jim Brohman put his signature to this letter on June 9, 1995. And, the union proceeded to prepare the case for adjudication. It therefore does not lie in the employer's mouth, over two years later before me, to take an initial objection to Ed Foreman's grievance being heard on the

footing that he failed to prove that a "written request" had preceded the filing of the grievance. The employer is estopped from taking this position.

I come easily to this conclusion because there is no prejudice to the employer entailed. The substantive point of the "written request" is surely to provide the employer with a chance carefully to review whether a given job description is indeed "complete and current" before being faced with a grievance on the matter. On the facts before me, the employer had lots of notice as to the Lookout Persons' concerns with their job descriptions. And a lengthy process of review and consultation around the job description and criticisms of it was engaged in by all concerned for almost a year prior to the grievance being filed.

This case inhabits a borderland between the jurisdiction under the collective agreement of an adjudicator appointed pursuant to the *Public Service Staff Relations Act* and that of job classification appeal officers. On the one hand, a great deal of what I heard in the grievors' evidence, pointed to the conclusion reached in *Taylor* (Board file 166-2-20396) [Young], at page. 15, that "... there was the unmistakable sense that issues of classification and pay were at the root of this dispute." For the most part, I accept the contention of Mr. Smart that the matters spoken to by the grievor's evidence amount to arguments about job analysis and job evaluation. But, on the other hand, there are a few items in the job description which suggest, in the language of *Taylor*, at page 14, that "... it omits to make reference to a particular duty or responsibility which the employee is otherwise required to perform."

On balance, concerning this issue of what is arguably omitted from the job description, I am persuaded that the grievor's case under article M-32.01, unlike *Taylor*, does not deserve to be dismissed. The clearest example of such an omission occurs under the heading "RESPONSIBILITY FOR TECHNICAL RESOURCES" where there is no mention of the monetary worth of the technical resources under a Lookout Person's care. Despite Ed Foreman's written submission to the employer that there ought to be a reference under this heading to the fact that the value of the technical resources for which a Lookout Person is responsible "exceeds \$100,000", the job description remains silent on this question. Ed Foreman testified that he drafted his proposals for the job description under the discipline of the Draft Work Description Guide authored by the PS2000 Classification Simplification Task Force, 3rd ed.,

November, 1992, published by the Treasury Board Secretariat. [*the PS2000 Guide*]
Under the heading "Responsibility for Technical Resources" this *Guide* states:

Give the monetary worth of the technical resources cared for.

[Emphasis added]

When asked about this matter, Keith Kepke, Head of Forest Fire Management in the Yukon at all material times, stated that he had no recollection of the discussions on this issue which led to the job description omitting any mention of the value of the technical resources cared for by a Lookout Person. However, he did say that Ed Foreman's proposed figure of \$100,000 was pretty close to replacement value of the equipment involved. I can only conclude that, in this respect, with no dispute before me about the fact that the monetary worth of the technical resources cared for is not stated, this omission in the job description runs afoul of article M-32.01's admonition that it be "a complete and current statement of ... the responsibilities of ... [the] ... position."

A second example occurs under the heading "METHODS, TECHNIQUES AND PRACTISES" where one finds the statement: "Techniques and methods in performing minor maintenance on equipment." Ed Foreman's draft expands on this sentence in the following way: "The work requires knowledge of the methods and techniques of basic carpentry, mechanical and electrical skills required to maintain the lookout and related equipment." *The PS2000 Guide* calls for the following:

When it is not evident, indicate the complexity of the methods, techniques and practices and the depth of knowledge required.

[Emphasis added]

Against this standard, the job description again falls short. Each of the Lookout Persons who testified told stories of finding themselves regularly being faced with maintenance and repair challenges which required basic handy-person sorts of skills including carpentry, mechanical and electrical skills. And, I heard no case from the employer as to why Ed Foreman's suggested specificities, in line with *the PS2000 Guide*, were not required.

A third example which strikes me is under "WORKING CONDITIONS" where, under the "ENVIRONMENT" sub-heading, Ed Foreman's draft suggested a sentence which reads: "The work involves occasional exposure to lightning strikes and dangerous wild animals." The job description omits to address this factor. *The PS2000 Guide* states:

Report the type or combination of disagreeable conditions that exist or arise from the work and the frequency and duration of exposure to them.

[Emphasis added]

Mr. Kepke's evidence in reply to Ed Foreman's request in this regard was to say that the Yukon is "bear country" and that the Lookout Person ran no special risk from wild animals. Given the relatively remote locations of most of the lookout towers, I am not convinced by Mr. Kepke's answer. And, each of the three Lookout Persons who gave evidence told a story or two about close encounters with bears and other dangerous wild animals while on duty.

On the lightning risk question, I heard from a Lookout Person who was trapped in a free-standing fire tower for the duration of an electrical storm because of the danger entailed in descending the exposed and un-grounded ladder. I also heard stories of Lookout Persons working in tower cupolas as they were subjected to lightning strikes. Mr. Kepke did, however, concede that the occupant of a lookout tower, given its height and possible location on a ridge, would be exposed to a higher probability of being struck by lightning than would the ordinary Yukoner. So, again, on balance, I find that the job description does not measure up to the requirements of article M-32.01.

For the reasons which I have given, this grievance is sustained. To paraphrase the concluding words of *Littlewood et al.* (Board file 166-2-16044) [Deans], at page 19, it is clear from the evidence that the responsibility which Lookout Persons assume in a number of areas is greater than what is reflected in the job description. The employer is hereby required to provide a job description which cures these defects by providing a complete and current statement of the duties and responsibilities of Lookout Persons. I note from Mr. Kepke's evidence that the employer will be engaging

in a periodic review of the Lookout Person job description in the coming months. Compliance with this decision can become part of this planned review process. I conclude by expressing the hope that the employer will leave nothing relevant unsaid in the document which will ensue from this process.

**Ken Norman,
Board Member**

SASKATOON, January 28, 1998.