File: 166-2-27453

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

STEPHANIE B. REID

Grievor

and

TREASURY BOARD
(Agriculture and Agri-Food Canada)

Employer

Before: Richard Labelle, Board Member

For the Grievor: Andy Zajchowski, Professional Institute of the Public Service of Canada

For the Employer: Jean Daniel Bélanger, Counsel

Heard at Ottawa, Ontario,
November 25 and 26, 1996.

Dr. Stephanie B. Reid, a Veterinary Medicine Officer (VM-02) in the Veterinary Biologics and Biotechnology Animal Health Division, Agriculture and Agri-Food Canada, Nepean, Ontario, is grieving the employer's failure to provide her with a complete and current job description. Her grievance dated October 13, 1995 reads as follows:

> *I hereby grieve the inaccuracy of my job description as signed by me under duress May 29, 1995, which has subsequently been wrongly classified as a result of missing information. This is contrary to Article 20 PIPSC Master Agreement with Treasury Board.*

Clause 20.01 of the Master Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada reads as follows:

ARTICLE 20

STATEMENT OF DUTIES

> *20.01 Upon written request, an employee shall be entitled to a complete and current statement of the duties and responsibilities of his position, including the position's classification level and the position rating form.*

The grievor is requesting the following corrective action:

> *Reclassification of the position should be reviewed following provision to me of a "complete and current job description".*

The hearing lasted two days with the grievor testifying on her own behalf and Dr. B.S. Samagh testifying for the employer.

Preliminary Statement

The grievor's representative, Mr. Andy Zajchowski, indicated that the grievance concerns specifics in the grievor's job description and that the work performed as of January 1, 1994 is not accurately described in the job description. The most recent copy of the grievor's job description is dated April 2, 1996 (Exhibit G-9, tab 10). The grievor's representative indicated that he is not asking for intervention contrary to section 7 of the *Public Service Staff Relations Act (PSSRA).*

Reference was made to the job description (Exhibit G-9). Under the heading "Client-Service Results", the grievor wishes to change the paragraph to read as follows:

> *Review, evaluate and provide operational advice and guidance* ***on veterinary, biologics product submissions*** *...*

In the second paragraph, the parties agreed that the words "in the absence of the responsible program officer" should be deleted and it should read as follows (Exhibit G-2, tab 7):

> *Provide backup professional review and coordination of the release of serials of those veterinary biologics required by VBBS to be submitted to the Biologics Evaluation Laboratory for testing.*

The parties also agreed that under "Key Activities", the first paragraph of page 2 should read as follows:

> *As requested, participate in Veterinary Biologics and Biotechnology program development, implementation and evaluation activities or other Branch projects such as the Business Alignment Plan* ***cost recovered*** *and equivalency* ***harmonization*** *discussions under the North America Free Trade Agreement.*

There should be a new heading added after and the paragraph following should read as follows:

> *Review and evaluate* ***and license new veterinary biologics product submissions*** *revisions and/or updates (labels, production outlines, inserts, etc ...) to currently licensed products as submitted by the manufacturer for product file maintenance and licensure status.*

Also, the words "senior management, regulatory affairs and Branch officials" are to be inserted at the end of the last paragraph of "Key Activities":

> *Direct, coordinate and or participate in special projects; management and other related duties as assigned including Business Alignment Plan and consultation with legal services,* ***senior management, regulatory affairs and Branch officials.***

On page 11, the third paragraph under "Element 15: Communications" should read:

> *Effectively explaining the reporting requirements for **product registration, serial releases, and** for adverse reactions or product complaints to manufacturers and veterinarians.*

These additions to the grievor's job description were discussed and agreed to by the parties at the hearing.

Summary of Evidence

Dr. Stephanie B. Reid's current position is Veterinary Medicine Officer (VM-02), effective September 12, 1995. She was an acting VM-03 at Agriculture Canada before her secondment to Health Canada. Dr. Reid has a B.Sc. in agriculture as a doctor in veterinary medicine, veterinary biologics, and she learned to do product submissions. From November 1990 to April 1991, Dr. Reid was acting VM-03 at Agriculture Canada. She then went to Health Canada from June 1991 until the end of July 1993 and worked in the field and drug programs and in the Field Operations Directorate; she then returned from a secondment at Health Canada at the end of August 1993. Her classification when she returned to Agriculture Canada from her secondment became VM-01, from acting VM-03.

Upon her return to Agriculture Canada, the grievor did product submission updates and was involved with the Canadian Animal Health Institute (CAHI). She also processed access to information requests and regulatory permit reviews. The grievor stated that she did not do product submissions when she returned to Agriculture Canada in August 1993. She also stated that she asked on three or four occasions during that year for a re-evaluation of her qualifications and for a re-evaluation of the qualifications or information that she brought back with her from Health Canada. She was not given credit for this.

Reference was made to Exhibit G-2, tab 7. The witness stated that she saw the job description of a colleague, Dr. Penny Greenwood, on her computer. Reference was made to Exhibit G-3, tab 15, page 3, the first draft of the job description dated February 20, 1995. The grievor stated that she was told to write her own job description. The grievor met with a personnel officer. Reference was made to

Exhibit G-4, tab 11. This was the third draft of the grievor's job description. Reference was made to Exhibit G-5, tab 8, which is another draft of the grievor's job description with revisions. The grievor's representative referred to Exhibit G-6, tab 9, the job description for the position of Staff Veterinarian, Veterinary Biologics and Biotechnology. The grievor stated that in this job description (Exhibit G-6) six areas in her job description were removed by Dr. Samagh. The areas removed were: (1) veterinary biologics product reviews; (2) Access to Information and Privacy (ATIP); (3) legal challenge; (4) business alignment plan cost recovery; (5) Canada - U.S. Free Trade Agreement; and (6) equivalency and harmonization of laboratory test standards for veterinary biologics. The grievor stated that she signed this job description, dated May 26, 1995, under duress.

Reference was made to Exhibit G-7, tab 13, a "Communication Planner". Reference was made to Exhibit G-9, tab 10, which is the grievor's current job description dated April 2, 1996. It was stated that the grievor's unit receives between 40 to 50 submissions per year for review, evaluation, and license. The grievor works with the CAHI and has other related duties. The grievor stated that in her role as a reviewer, there was one year's worth of submissions which were backlogged; that the important work was not getting done at that time. Reference was made to Exhibit G-8, tab 14, a memorandum dated February 21, 1996 from the grievor to Dr. N.G. Willis, Director General, A.P.H.D. Also under Exhibit G-8, reference was made to a memorandum dated April 27, 1994 from the grievor to Dr. B. Stemshorn, Director, Animal Health Division, concerning "Duties of the Professional Staff". The grievor stated that there was a backlog of 50 boxes of submissions over a one-year period. Reference was made to page 2 of this memorandum and the heading: "DUTIES OF VBBS OFFICERS". Under "FELINE PRODUCTS", the grievor's name appears. She was the lead person on this; she was responsible to do the work as per her classification level and expertise on feline and canine products. Reference was also made to page 3 of this memorandum identifying the grievor's principal areas of responsibility. They are as follows:

> *6. Regulatory review issues, cost recovery and CAHI liaison.*
>
> *Dr. Stephanie Reid* *Dr. B.S. Samagh*

7. Adverse reactions.

Dr. Stephanie Reid *Dr. Penny Greenwood*

8. Laboratory testing and serial releases.

Dr. Stephanie Reid *Dr. Primal Silva*

9. Liaison on lab projects R&D.

Dr. Primal Silva *Dr. Stephanie Reid*

The grievor stated that all products under this must meet the requirements of the bench test; quality assurance testing. There are over 360 serial releases per year going through the system and 30 percent of these are tested to assure that products meet the standard test requirements. The grievor stated that she was a reviewer before and is one now and has done product reviews since January 1994. With respect to the question "What product reviews?", the grievor replied: "Feline, rabies, fish vaccine companies, poultry and poultry vaccine". The grievor stated that she has done few reviews since January 1994 because of other duties she has to perform. Also, the grievor stated that she is busy with CAHI meetings, backlogs of submissions, and that her resources were diverted.

Under documentary evidence, the employer stated that they were ready to accept that the grievor did work-related functions. The parties agreed to tabs 16 to 23 and also agreed to change the wording of the grievor's job description (Exhibit G-9, tab 10). The employer agreed to the new inserts on pages 1, 2 and 11 of the job description.

Reference was made to Exhibit G-3, tab 15, which was the first draft, dated February 20, 1995, of a detailed job description for the grievor. Reference was made to item 4:

(Pre-licensing - the grievor performed this five percent of the time.)

4. Veterinary Biologic Product Review and Product File Maintenance

(a) Veterinary Biologic Product Review

Responsible for review and evaluation of submissions for product licensure as assigned by the Associate Director of VBBS. Ensure that the

> *submission contains all the necessary information and data to meet the regulatory requirements of purity, potency, safety and efficacy. Prepare all correspondence pertaining to the product review.*

(Post-licensing - 15 percent of the grievor's work was involved in this.)

> *(b) Veterinary Biologic Product File Maintenance*
>
> *Responsible for performing tasks such as review of Outlines of Production, product labelling and related correspondence to manufacturers/importers as necessary to maintain product file in currently licensed veterinary biologics.*

Reference was made to Exhibit G-10, tab 1. Reference was made to Exhibit G-11, tab 2, a memorandum dated April 27, 1994 which outlines the duties and responsibilities of that particular unit. The grievor reiterated that numbers 6, 7 and 8 of this memorandum were her responsibility; that this document was the official terms of reference of duties assigned. Reference was made to Exhibit G-12, tab 3:

> ***Mandate:*** *To provide a product registration service for veterinary biologics on behalf of the Minister of Agriculture and Agri-Food.*
>
> ***Staff:*** *.....*
>
> *Stephanie Reid Reviewer Serial Release, Adverse Reactions*
>
> ...

Reference was made to Exhibit G-13, tab 4: "VBBS Projects":

> *Veterinary Biologics Registration (New Product Review).*
>
> ...
>
> *Permit & Licensing Documentation - P. Greenwood/S. Reid*
>
> ...
>
> *Adverse Reaction Investigation & Resolution - S. Reid*
>
> *Serial Release of Canadian Veterinary Biologics - S. Reid*

...

Regulations & Compliance (R & C) - S. Reid/P. Greenwood

...

Harmonization of various activities for the licensing of vet biologics under Canada-United States trade agreement & OIE initiative - BS, SR, PS

Find alternative ways to reduce cost, share cost or avoid cost of the vet biologics licensing program - BS, SR

ATIP/Legal Challenge -- S. Reid/Dr. Samagh

Reference was made to Exhibit G-14, tab 5, a project entitled: "Veterinary Biologics Registration (New Product Reviews)". Under "New Product Reviews", the grievor stated full-time equivalency of work was five percent of her duties. Reference was made to Exhibit G-15, tab 6, which indicates documents which fall under "Veterinary Biologics Product Review". This is an example of some of the work under review status that the grievor performed.

The grievor testified that there were four stages to the product review:

(1) product development;
(2) pre-licence stage;
(3) registration stage;
(4) post-registration monitoring of the licencing of this product.

The grievor stated that there are two major categories on the product submission review. New product reviews include the product development phase, the pre-licensing phase, the registration phase. The next major category is product submissions, generic update and revisions to the existing product to maintain current license status. Components of product submission include production outlines, manufacturing methods, special outlines of production, serial release testing requirements, safety studies, and field testing. The grievor stated that under these two major categories she has been assigned duties in all these major areas. The grievor stated that she has done work in the new product review. Reference was made to tabs 16 to 24. The grievor's representative stated that this shows that the grievor had been assigned and therefore performed the duties as outlined in tabs 16 to 24.

Reference was made to Exhibit G-11, tab 2, "DUTIES OF VBBS OFFICERS", which states:

> *1. Review of product submissions including updating existing files, labels, advertisements etc.*
>
> *...*
>
> *FELINE PRODUCTS Dr. Stephanie Reid ...*

It was stated that the grievor did not necessarily perform this work; this was a work plan. With respect to new product submissions, the grievor stated that she worked on cattle vaccines and on the product development phase and the pre-licensing phase.

Reference was made to Exhibit G-16, tab 17, a letter dated June 1, 1995 from the grievor to the Vice-president, Manufacturing, of a company called "Biostar". The recommendations by the grievor in this letter were accepted by the company in question. Reference was also made to Exhibit G-17, tab 18, another letter sent by the grievor on March 31, 1995 to a company called "Aqua Health Ltd.". The grievor stated that she ensures that the product meets Canadian standards. These letters are examples of work that was performed in part by the grievor.

The grievor stated that she was involved in four reviews with: (1) Biostar; (2) Aqua Health Ltd.; (3) Fel-O-Vax; and (4) Langford. This work was assigned to the grievor. The grievor stated she had the final say and that she signed the letters.

Under cross-examination by counsel for the employer, the grievor was asked if she had prepared the job description dated February 1995, which was the first draft, and she replied that she had. When asked how many times she assumed the role of Assistant Director between 1993 and 1995, the grievor replied that Dr. Samagh asked her to go to three or four high level meetings on his behalf when he was absent from the Department or could not go himself.

Counsel for the employer stated that the grievor had indicated that she had reviewed four products and she was asked whether Fel-O-Vax was a new product The grievor stated that it was.

Reference was made to Exhibit G-16, tab 17, the grievor's letter to "Biostar". This involved a serial release. This was under a pre-licensing situation. The first letter to the Company under the serial matter was sent by the grievor.

Counsel for the employer referred to Exhibit G-17, tab 18, the letter to Aqua Health Ltd. The grievor was asked if this dealt with product release or non-release. The grievor stated that this dealt with three pre-licencings of serial release to meet all standards required by the Department.

With respect to the Biostar letter, the grievor was asked if she had completed the Veterinary Biologics Review Guide and she replied that she had not.

Upon questioning as to when the grievor received the request for Fel-0-Vax, the grievor replied: "September 1994". Counsel for the employer referred to Exhibit G-15, tab 6, a letter dated December 30, 1994 to Ms. Ivana Antonacci. The work was completed on December 6, 1994. The grievor was asked if she had spent two full months on reviewing this product. She replied, "No, not at that time.", and that she had other work to do.

Reference was made to Exhibit G-14, tab 5, first page, where it shows the grievor as a reviewer in this particular unit. The grievor replied: "Yes, that was correct." It was mentioned by counsel for the employer that the reviewer, the grievor, spent 0.05 FTE (time on a product) for new products review of which the grievor's duties were only five percent.

The grievor indicated that she had been Acting Director on Dr. Samagh's behalf three or four times. She stated that she had met with a major company in February 1995 regarding access to information; Canadian information coming from an American company indicated it was a legal challenge by the United States. She met with lawyers for two and one-half days. Dr. Samagh had given the grievor full powers and responsibilities. The grievor stated that she met with the Privacy Commissioner, ATIP, on complaints. Reference was made to Exhibit G-16, tab 17. The grievor stated she had full decision-making and responsibility on the serial release of a new product developing phase. It was the grievor's responsibility to ensure that the Company followed the serial release reporting.

The grievor was asked if she filled the new product review guide. The grievor replied "No", that this was a cattle vaccine product and that the grievor's specialty is feline products.

The witness for the employer, Dr. B.S. Samagh, stated that he was Associate Director, Veterinary Biologics and Biotechnology, Animal Health Division, Agriculture Canada, from August 1990 until September 1996. The description of this Division was tabled as Exhibit E-1. The Division is responsible for licensing and regulation of animal vaccines.

The witness stated that the main duties for the licensing of animal vaccines are pre-licensing and post-licensing. Under pre-licensing duties, manufacturers will send to the VBBS agreed-upon formats and all research information is worked on by officers of that Section. This covers new products. Information is analyzed to see if the requirements have been met. If the product is deemed okay for marketing, then it is licensed. Under post-licensing activities, it includes certain standards after the manufacturer has been given his license. The product will be tested, results will be sent to unit officers; they will look at the results and compare those results and see if they meet the format of the pre-licensing. Then the serial will be released actively.

Counsel for the employer tabled Exhibit E-2, which is the format used for new products. Officers will use these forms only on new products. This is the "Veterinary Biologic Product Review Guide".

Reference was made to Exhibit G-3, tab 15, page 3, the first draft job description written by the grievor. The format for the job description was provided by personnel officers at Agriculture Canada. Dr. Samagh stated that he asked the grievor to indicate the percentage of time worked for the different projects coming into the Section.

Under item 4, "Veterinary Biologic Product Review and Product File Maintenance" (pre-licensing and post-licensing), the witness stated that five percent of the grievor's time was under pre-licensing and 15 percent of her time was involved in that particular line of work under post-licensing.

Counsel for the employer referred to Exhibit G-3, tab 15, page 2 of the first draft of the grievor's job description. Under "5(b) Management", Dr. Samagh stated that the grievor was acting on his behalf.

Counsel for the employer tabled Exhibit E-3, a new draft of a job description for the grievor. Under item 4, "Veterinary Biologic Product Review And Product File Maintenance", this would be approximately only five percent of the grievor's work time.

> ***4. Veterinary Biologic product Review and Product File Maintenance***
>
> ***(a) Veterinary Biologic Product Review***
>
> *Under the direction of senior staff veterinarian or the Associate Director, responsible for review and evaluation of 1-2 conventional new product submissions for product licensure.*
>
> *Identify deficiencies, irregularities in submission application and or the submission content, scientific and technical data to meet the regulatory requirements of purity, potency, safety and efficacy.*
>
> *Consult internal expertise as necessary to accomplish the review and evaluation of scientific and technical data.*
>
> *Requires knowledge and ability to analyze and make judgment/decision on medical, scientific, technical and statistical data.*
>
> *Prepare all correspondence pertaining to the product review.*

And under item 5, "Import Permit Issuance, Management and Other Related Duties", the grievor performed this ten percent of the time:

> ***5. Import Permit Issuance, Management and Other Related Duties***
>
> ***...***
>
> ***(c) Other Related Duties:***
>
> ***Special Projects/Reviews***
> *- Changes to systems, procedures, forms or letters*
> *- Revise/Design forms*

> *- create internal documentation and information such as: Project goals and objectives, rationale, action plan, updates or progress reports and final reports.*
>
> *Directed and participated in Special projects to modify veterinary biologics licensing system eg. (a) Serial Release Review of Files & CDN Manufacturers (b) Canadian/USA Free Trade Agreement Test Equivalency/Harmonization.*
>
> ***Attend Meetings***
>
> *- prepare agendas, minutes, updates, reports, statistics, briefings, presentations in designated responsible subject areas or other related work areas as requested/deemed by the Associate Director or senior management.*

Counsel for the employer tabled Exhibit E-4 which is the job description dated March 31, 1995. This was also tabled as Exhibit G-4, tab 11, by the grievor's representative.

Reference was made to Exhibit G-6, tab 9, the job description dated May 26, 1995. Dr. Samagh stated that the grievor was reclassified from VM-01 to VM-02 with this new job description. With respect to the grievor's allegation that six areas of her job description had been removed by him, Dr. Samagh replied that the March 31, 1995 version of the job description and the May 26, 1995 version are basically the same. The May 26, 1995 (Exhibit G-6) job description was referred to. Reference was made to pages 1, 2, 9 and 11:

> *KEY ACTIVITIES:*
>
> *...*
>
> *Review program regulations for changes and make recommendations for amendments. Consult with the biologic manufacturers and importers on the standards and guidelines to provide information, compliance education, promotion and enforcement.*
>
> *...*
>
> *Review, evaluate import permit applications based on risk assessment and provide issuance of an import permit. Direct, coordinate and or participate in special projects; management and other related duties.*

...

SUBSTANTIATING DATA

WORK DESCRIPTION SPECIFICATIONS

FACTOR 1: SERVICE DELIVERY

Element 1; Interaction

...

Liaising effectively with senior scientific and technical staff of BEL, and veterinary biologics manufacturers and importers in the areas of: ... new product registration/licensing; ...

...

Element 13; Theories and Principles

...

Canada-United States Trade Agreement (CUSTA) equivalency and harmonization of laboratory test standards for veterinary biologics.

...

Element 15: Communications

...

Preparing written responses for signature of/and on behalf of the Associate Director, VBBS, in the designated responsible subject areas: ... legal challenge and ATIP requests as well as others as requested/required.

...

Reference was made to Exhibit G-11, tab 2. Dr. Samagh stated that this was a management plan to divide the work within that particular unit. Reference was made to page 2, "DUTIES OF THE VBBS OFFICERS", for post-licensing.

Counsel for the employer referred to Exhibit G-15, tab 6, where the grievor stated that this was work that she had performed on Fel-O-Vax which was a new product. Dr. Samagh replied that the grievor was assigned this work; that the grievor had asked to be trained in licensing of new products. The grievor was assigned this work in September or October 1994 and on December 8, 1994 the first letter was sent

to the Company. The letter was signed by the witness, Dr. Samagh, and copied to the reviewer, Dr. Reid. A second letter also signed by the witness was sent on December 30, 1994. Dr. Samagh stated that his main responsibility is to ensure that the work going out of his Section is consistent and that he signed all letters for new product licensing.

With respect to the grievor testifying that she had worked on this product from the end of September to December 1994 and whether she had worked on it full time, Dr. Samagh, replied: "No, not full time." The grievor worked on serial releases and then worked with him and Dr. Gifford on this product, which was pre-licensing.

Reference was made by counsel for the employer to Exhibit G-14, tab 5, a project entitled: "Veterinary Biologics Registration (New Product Reviews)". The witness said that on page 1 where the grievor appears as reviewer, this was a new product review; it was five percent of her duties. With respect to the project "Review of Labels and Outlines of Production for Licence Products" (page 2), it states, for the grievor, .20; on "Permit and Licensing Documentation" (page 3), .05; "Adverse Reaction Investigation and Resolution" (page 5), .25. The witness indicated that those were the prime duties of the grievor at that time. Dr. Samagh testified that when the grievor said that these were her prime duties, she was only part of the support staff. Also, under the project "Serial Release of Canadian Veterinary Biologics" (page 6), she was also part of the support staff.

Reference was made to Exhibit G-9, tab 10, which is the grievor's current job description dated April 2, 1996. The employer's witness was asked if this job description was accurate. Dr. Samagh replied that, to his knowledge, it was accurate. Dr. Samagh was asked why the item "Review and Evaluate New Products" was not included in the grievor's job description. The witness responded that new products are only five percent of the grievor's total work load; she worked on one new product in the pre-licencing stage only. The employer could not substantiate the grievor's job description with the new heading since only five percent of her time was spent on this.

Reference was made to Exhibit G-14, tab 5. Under the heading "Project Description", the witness was asked what this involved. The witness stated that this

assumes that the requirements are met for licencing of the products. Under "Milestones & Key Dates", he stated that one reviewer can do 20 cases per year - new products. Unit work on this is divided between senior officials (VM-04s).

Reference was made to Exhibit G-12, tab 3, "VBBS Overview":

> ***Mandate:*** *To provide a product registration service for veterinary biologics on behalf of the Minister of Agriculture and Agri-Food.*

The witness stated that he requested that this document be prepared and Dr. Gifford prepared it. The first column shows the name of the officer involved; the second column is the main title of that officer; and the third column shows his/her responsibility. In the third column it is shown "Serial Release, Adverse Reactions" (post-licencing) as the grievor's responsibilities, which are her main duties.

Counsel for the employer tabled Exhibit E-4(a), notes written by Dr. Samagh with respect to the six areas that the grievor alleged were removed from her job description. He pointed out where these six areas were in the grievor's job description. This would be the grievor's current job description of April 2, 1996.

Under cross-examination, the witness was asked what the process for the submission review was. Dr. Samagh stated that the product comes in as a new product and then there are updates and revisions. Manufacturers submit complete dossiers with forms already filled in. The manufacturer does all the necessary work regarding the vaccine and does all development work before submitting this submission to Agriculture and Agri-Food Canada. The witness stated that sometimes a manufacturer has to resubmit before the new product is licenced. Product submission updates depend on what comes back under conditional licensing.

Reference was made to Exhibit G-11, tab 2, "Duties of the VBBS". There was no evidence that this had been withdrawn or rescinded. The witness stated that this was a proposal only and referred to Exhibit G-14, tab 5, for the new duties; duties for the new product or licence product. The witness stated that he sees product reviews as pre- and post-licence.

Reference was made to Exhibit G-17, tab 18, the letter from the witness to Aqua Health Ltd. This was a pre-licencing serial, not a new product. This

responsibility is given to a new product reviewer and the grievor was not a reviewer for the product indicated in this letter. The grievor was asked to check the work on this review. The grievor only interpreted information that was agreed upon by the main reviewer. The letter is signed by the witness but the "Manufacturer's Serial Release Test Report" has the signature of Dr. Reid, the grievor.

Under cross-examination, the representative for the grievor referred to Exhibit G-15, tab 6. It was mentioned that the grievor had testified that she had not met with Dr. Samagh on this particular issue. The witness responded that they had met many times. The grievor had worked with Dr. Gifford on this file prior to December 8, 1994. The witness stated that he did ask the grievor to work on a file concerning Fel-0-Vax, and that the grievor did sign off that file.

Reference was made to Exhibit G-11, tab 2. Under the heading "DUTIES OF VBBS OFFICERS", items 8 and 9 show the grievor's liaison on laboratory projects. The witness was asked if it was not fair to say that the grievor is working on new projects. The witness responded that all the work for this is assigned to senior officers, not for new products or serial.

Reference was made to Exhibit G-6, tab 9. Reference was made to page 2, under "Element 1: Interaction:

> *Liaising effectively with senior scientific and technical staff of BEL, and veterinary biologics manufacturers and importers in the areas of: ... new product registration/licensing; ...*

The witness stated that this was not a key activity for the grievor; it was only five percent of her work. The witness stated that only one product per year may be done with five percent of the responsible duties outlined in the job description. The witness stated that the grievor had worked three months in an acting position on his behalf prior to her secondment at Health Canada.

On redirect, reference was made to Exhibit G-17, tab 18.

Reference was made to Exhibit G-15, tab 6. The witness stated that the grievor was assigned this file. Her responsibility was transferring information from the manufacturer according to the guidelines on the departmental forms.

Reference was made to Exhibit G-11, tab 2. The witness stated that the duties of the professional staff were not cast in stone; this was a working document only. The grievor did one new product review in one year which was the Fel-0-Vax product.

Argument for the Grievor

Mr. Andy Zajchowski referred to section 7 of the *PSSRA* and stated that I should follow the outlines of the decisions in Lanouette (Board file 166-2-2230) and Valadares (Board file 166-2-22478). Since this grievance relates to a provision of the collective agreement, he submitted that I have jurisdiction to rule on this case. He stated that the grievor's job description of April 2, 1996, as revised and with agreed upon changes, is still not complete and current as of January 1, 1994. With respect to the second finding, the fact that the grievor does perform new product submission reviews, the employer should be directed to provide a current and new job description.

Reference was made to the Valadares decision where it was found that the job description that the grievor had received was not current and complete and the adjudicator granted the grievance. Mr. Zajchowski argued that the grievor is performing new product submission reviews and that all of the evidence points to the fact that the grievor, Dr. Reid, has performed such work. Mr. Zajchowski referred to Exhibit G-11, tab 2, where it states that the grievor was given responsibility to do review of product submissions; this role was never taken away from her.

Mr. Zajchowski argued that the grievor testified that she had worked on two major categories of new product submissions. She testified that she worked independently in all areas of product submission review. He asked that I prefer the grievor's testimony to that of Dr. Samagh since he provided no proof that he had provided guidance to the grievor in her work on the Fel-0-Vax file. Dr. Samagh's credibility is at issue by refusing to recognize the grievor's experience. Mr. Zajchowski stated that without the grievor's experience, the work could not have been done and that the employer accepted tabs 16 to 24 as work having been done by the grievor.

Mr. Zajchowski argued that the four examples of work that contribute in part to the new product review (Fel-0-Vax; Langford; Biostar; and Aqua Health Ltd.) show that the grievor exercised independent, professional judgment and that she received no direction from Dr. Samagh during the course of the Fel-O-Vax review.

Mr. Zajchowski argued that, in general, the grievor has dealt with files on complex matters and that there was no praise, recognition or consideration from Dr. Samagh for the work done. He also argued that Dr. Samagh had never prepared a performance appraisal for the grievor and he cannot deny after the fact that the grievor did new product submission reviews as well as other product submission reviews. The new product review is not included in the grievor's job description; therefore, there is a deficiency in that job description. Mr. Zajchowski argued that we have management's expectations for Dr. Reid to do new product review and other product submission work.

The grievor's representative referred to the definition of the word "complete" as found in Black's Law Dictionary, 6th Edition, 1990:

> ***Complete**, adj. Full; entire; including every item or element of the thing spoken of, without omissions or deficiencies, as a "complete" copy, record, schedule, or transcript.*

Argument for the Employer

Counsel for the employer, Mr. Bélanger, argued that I do not have jurisdiction under section 7 of the *PSSRA*. He made reference to the decision in Taylor (Board file 166-2-20396). If I decide that I do have jurisdiction, counsel submits that there is no violation of clause 20.01 of the Master Agreement.

This case is straightforward; it is a simple situation. The grievor is expecting more in her job description than what she was doing. Counsel for the employer argued that, in his opinion, I should agree with the decision in Taylor.

Counsel for the employer referred to the Lanouette (supra) decision. He indicated that the adjudicator in that case took jurisdiction and that the grievor's representative submitted that we are in a similar situation in this case. The grievor submitted drafts of her job description which indicated what she thought were her

duties. This was mentioned under cross-examination. It was also pointed out that some of those duties were exaggerated or not accurately described.

With respect to assuming the role of Acting Associate Director on behalf of Dr. Samagh, the witness testified that the grievor was perhaps in charge of the office for one day and represented him in meetings three or four times. This was a straightforward situation. The employer has the exclusive responsibility to assign duties under section 7 of the *PSSRA*. The grievor is expected to perform these duties, that is, the contents of the job description and nothing else. The grievor's past experience is not relevant; her educational background and curriculum vitae are not relevant. The fact that the grievor worked on complex files without recognition by Dr. Samagh is not relevant. That no performance appraisals were prepared by Dr. Samagh is also irrelevant.

Exhibit G-11, tab 2, the memorandum concerning "Duties of the Professional Staff", these were management's expectations. Dr. Samagh explained that this was done in planning the division of the work for the section as requested by Dr. Stemshorn. It is not relevant. What is relevant is that the grievor performed the duties in her job description of April 2, 1996 and this was complete according to Dr. Samagh's testimony. The employer agrees that the work was performed according to the job description of April 2, 1996.

Reference was made to Exhibit G-11, tab 2. Under cross-examination and also according to the testimony of Dr. Samagh, it was shown that only one new product was worked on during that period. The evaluation of that work was only five percent of the grievor's time. Counsel referred to Exhibit G-14, tab 5.

With respect to the Valadares decision (supra), in that case the employer consented to provide a job description; that is why that grievance was granted.

In reply to the employer's argument, Mr. Zajchowski argued that the allegation that the grievor exaggerated her duties is false; her role was explained clearly. The problem is to get credit for the new product submission reviews.

The Taylor case (supra) dealt with expectation of pre-determinations and the adjudicator ruled against the grievor. However, this grievance is different: it relates to

actual duties performed but not described. Therefore, the grievor's job description is not complete and current. It was uncontested that the grievor was doing new product submission review work.

Mr. Zajchowski argued that he hopes to see the facts represented in this decision.

Reasons for Decision

Mr. Bélanger is correct in arguing that it is not within my jurisdiction to adjudicate on matters of classification or assignment of duties. I do not intend to do so. However, after listening to the testimony and reviewing the evidence, it is clear to me that what I am being asked to do is decide whether or not the grievor was provided with a complete and current statement of duties according to clause 20.01 of the Master Agreement. Having considered all of 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 was so.

The grievor has not convinced me that she was performing enough of the key activities listed in her proposed draft job description. Also, in the new job description of May 26, 1995 the employer recognized the grievor's extra responsibilities and reclassified the position from VM-01 to VM-02. When I look at the job description of April 2, 1996 and at what the employer has agreed upon, the wording of this job description and the evidence adduced, it leads me to believe that, to the extent of the grievor's responsibility towards her work, this has been achieved. I also do not believe that Dr. Samagh asked Dr. Reid to perform other duties that were not reflected in her statement of duties.

It is important to remember 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. However, the duties that the grievor was asked to perform and did perform, according to her immediate supervisor, Dr. Samagh, were essentially those written in Exhibit G-9, tab 10.

I do not think the experience gained by the grievor during her secondment at Health Canada is relevant to any further implementation or increase of responsibilities to her current job description.

I also have to take into consideration the evidence relating to the memorandum of April 27, 1994, "Duties of the Professional Staff" (Exhibit G-8, tab 14). I have taken into consideration that this is a working document prepared for the benefit of the staff. I also took into consideration the one new product that Dr. Reid did work on during the course of one year. For the other products, she had been asked by Dr. Samagh to help other colleagues, not to go at it alone.

Therefore, in conclusion, on the balance of probabilities the grievor has not satisfied me on the evidence that she was performing duties that were beyond those in her job description or that she was asked to perform any extra duties which she claims to have performed. Also, especially since the employer, at the hearing, agreed to update the wording and/or language of the April 2, 1996 job description, I believe that this job description is an accurate reflection of the duties performed by the grievor.

Accordingly, for all these reasons, this grievance is denied.

Richard Labelle,
Board Member

OTTAWA, April 11, 1997.