

Files: 166-2-27758; 166-2-27761;
166-2-27681 to 27687 incl.; 166-2-27681 and 27692;
166-2-27709 and 27710; 166-2-27759 and 27760;
166-2-27762 and 27763; 166-2-27954



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JOHANNE TREMBLAY ET AL. (18 GRIEVANCES)

Grievors

and

TREASURY BOARD
(Revenue Canada (6), Health Canada (1), Veterans Affairs (11))

Employer

Before: Jean Charles Cloutier, Board Member

For the Grievor: Carole Rossignol, Professional Institute of the Public Service of
Canada

For the Employer: Michel LeFrançois, Counsel



Heard at Québec, Quebec,
November 19, 1997.

DECISION

This decision follows the hearing of 18 grievances referred to adjudication. It was agreed at the start of the hearing that the 18 grievances listed below would be heard together in French.

Johanne Tremblay, Revenue Canada	166-2-27758
Gérald Forgues, Revenue Canada	166-2-27761
Marie-Claude Cyr, Veterans Affairs	166-2-27681
Dominique Joly, Veterans Affairs	166-2-27682
Tara Whelton, Veterans Affairs	166-2-27683
Chantal Victor, Veterans Affairs	166-2-27684
Carole Lacoste, Veterans Affairs	166-2-27685
Ruth Leimanis, Veterans Affairs	166-2-27686
Diane Desjardins-Laganière, Veterans Affairs	166-2-27687
Monika Friedberg, Veterans Affairs	166-2-27691
Annick Hébert, Veterans Affairs	166-2-27692
Maria Lucia Murgante, Veterans Affairs	166-2-27709
Leslie Roy, Veterans Affairs	166-2-27710
Rémi St-Cyr, Revenue Canada	166-2-27759
Benoit Guay, Revenue Canada	166-2-27760
André Boudreau, Revenue Canada	166-2-27762
Ghislain Bouchard, Revenue Canada	166-2-27763
Louise Binet, Health and Welfare Canada	166-2-27954

The grievors are disputing the employer's interpretation of the provisions of the Public Sector Compensation Act respecting pay increments (the "increment freeze"), and the application of that interpretation to the provisions of their collective agreements, as a result of which they did not receive their increments on the date provided for in their collective agreements for a period of two years.

At the hearing before me, the two parties agreed to the following:

- (a) the grievances would be considered comprehensively, not by going into the details of each one;
- (b) the "increment freeze" period was from June 15, 1994 to June 14, 1996;
- (c) the pay increment period for full-time employees is provided for in the collective agreements and is 12 months, and the increments take effect on the date provided for in the collective agreements;
- (d) the pay increment period for part-time employees is generally 1,950 hours and the increments generally take effect on the first day of work immediately after those hours have been accumulated.

No witnesses were called by either party. The grievors' representative filed nine exhibits (Exhibits E-1 to E-9 inclusive) and the employer's representative filed five exhibits (C-1 to C-5 inclusive).

For the grievors

The argument presented by the grievors' representative may be summarized as follows: the employer should not cancel the time accumulated before the "increment freeze" went into effect, but should rather consider those hours as an entitlement, that is to say as "money in the bank", and carry them all over to before June 14, 1996. Both full-time and part-time employees should carry their increment date or the number of hours they had before the "increment freeze" of June 15, 1994 over to the same period preceding the date the freeze was lifted, June 14, 1996.

The representative emphasized that subsection 5(1.1) of the Public Sector Compensation Act clearly states that "*no employee shall be entitled to the incremental increases ...*" but does not state that they lose their vested rights to the time accumulated prior to June 15, 1994.

For the employer

The argument presented by the employer's representative may be summarized as follows: the expression "increment freeze" should not be used because there was

no "increment freeze", but rather an extension of the compensation system under subsection 5(1) of the Public Sector Compensation Act. Since the system was extended, it should be concluded that it continues as it previously existed, except that subsection 5(1.1) of the Public Sector Compensation Act states that "*no employee shall be entitled to the incremental increases*". It should therefore be concluded that the system that has always been used to calculate the increments continues in effect, but that the compensation owed on the relevant dates will not be paid.

DECISION

In the Public Sector Compensation Act (see below), Parliament clearly wanted to continue the system whereby all employees are compensated.

5. (1) ... every compensation plan for employees to whom this Act applies that was in effect on February 26, 1991 ... shall be extended for a period of seventy-two months beginning on the day immediately following the day on which the compensation plan would, but for this section, expire.

(1.1) Notwithstanding any provision of this Act ... or a provision of any compensation plan, no employee shall be entitled to the incremental increases ... that would, but for this subsection, form part of their compensation plan, during the period of twenty-four months beginning on the day on which this subsection comes into force.

However, Parliament wanted to "cancel" the right to increments for a two-year period from June 15, 1994 to June 14, 1996. The collective agreements provide that the grievors are entitled to an increment every 12 months or every 1,950 hours (in most cases) and that this increment will enter into effect on a specific date. The Public Sector Compensation Act amends the provisions of the collective agreements to cancel this right for a period of two years. The practical effect of this amendment is that, between June 15, 1994 and June 14, 1996, the collective agreements are deemed not to grant the grievors the right to an increment.

I believe the employees must be divided into two groups: full-time and part-time employees. The reasons for this decision may be seen more clearly from the following two tables:

Full-time Employees

May 18, 1994	Increment received
June 15, 1994	"Increment freeze" goes into effect
May 18, 1995	No increment
May 18, 1996	No increment
June 14, 1996	"Increment freeze" ends
May 18, 1997	Increment received

Part-time Employees

May 18, 1994	1,950 hours	Increment received
June 15, 1994		"Increment freeze" goes into effect
May 18, 1995	1,000 hours	Increment owed at 1,950 hours only*
May 18, 1996	1,950 hours	No increment
June 14, 1996		"Increment freeze" ends
May 18, 1997	1,000 hours	Increment owed at 1,950 hours only*
May 18, 1998	1,950 hours	Increment to be received

- * It is assumed that these employees have worked 1,000 hours per year since they are part-time. Whether or not there is an "increment freeze", such employees are entitled to an increment only after working 1,950 hours.

The Public Sector Compensation Act entered into effect on Friday, June 15, 1994 and, in accordance with the employer's interpretation of the said Act and the collective agreements, the grievors did not receive their increments on the date provided for in their collective agreements for a period of two years. The "increment freeze" went into effect at a very bad time for the grievors, and I lament that fact. However, I find that the employer's interpretation was correct.

For these reasons, the grievances are denied.

**Jean Charles Cloutier,
Board Member**

OTTAWA, December 18, 1997.

Certified true translation

Audra Poirier