

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

HOLLY GERVAIS

Grievor

and

TREASURY BOARD
(Solicitor General - Correctional Service)

Employer

Before: Evelyne Henry, Deputy Chairperson

For the Grievor: Paul Reniers, Professional Institute of the Public Service of
Canada

For the Employer: Harvey Newman, Counsel

Heard at Vancouver, British Columbia,
August 18, 1998.

DECISION

The parties agreed that there were no jurisdictional issues and that, should the grievance be successful, the retroactive date of application would be January 1, 1994 as opposed to date of hire and that there were no issues of timeliness as of that date.

The grievance concerns the interpretation and application of the Master Agreement between the Professional Institute of the Public Service of Canada and the Treasury Board expiring September 30, 1993, more specifically the Pay Notes governing Allowances, clause (1), paragraph B, subparagraph (b) (Exhibit 1). For ease of reference the entire paragraph is reproduced here:

PAY NOTES

ALLOWANCES

(1) For all purposes of pay, the annual rates of pay for the Nursing Levels stipulated in Appendix "A" shall be altered by the addition of the amounts specified hereunder in Column II in the circumstances specified in Column I.

Column I

Column II

...

B. Education Allowances

Where the following post-graduate nursing training or nursing education is utilized in the performance of the duties of the position:

<i>(a) Recognized speciality training course, 3-6 months</i>	<i>\$ 300</i>
<i>(b) Recognized speciality training course, 7-12 months</i>	<i>\$ 475</i>
<i>(c) One-year university course in Administration, Public Health, Teaching and Supervision, or Psychiatry</i>	<i>\$ 850</i>
<i>(d) Bachelor's degree in nursing</i>	<i>\$1,050</i>

*(e) Master's degree in
nursing*

\$1,450

*One (1) allowance only will be
paid for the highest relevant
qualification under paragraph 1(B).*

The same Pay Notes are found in the Nursing agreement, Code 219/94 expiring September 30, 1997 at appendices A-28 and A-29.

The issue is whether Holly Gervais is entitled to the education allowance under subparagraph B (b) by virtue of her nursing education. The grievor holds both a registration in Nursing (R.N.) and one in Psychiatric Nursing (R.P.N.). Ms. Gervais obtained her diploma of Psychiatric Nursing in Edmonton, Alberta pursuant to a two-year program of training which involved courses and on-the-job training in August 1986. In order to obtain a registration in Nursing, later on, Ms. Gervais had to take 16 months of additional training at the Vancouver Community College. The grievor explained that both the R.N. and R.P.N. program at the Vancouver Community College consist of 24 months of training, the first 12 months consisting of training common to both certificates. In the second year the training differs with Psychiatric Nursing training concentrating on dealing with mental illnesses and the regular Nursing training being concerned more with physical and general illnesses. She explained that in R.N. training, nurses get a six weeks module of psychiatry training, while in R.P.N., nurses focus on psychiatry for 24 months. The grievor was given credits for her courses in pharmacology, psychiatry and biology, but had to follow a program that focused on labour and delivery in obstetrics and on medical surgical rotations.

Ms. Gervais testified as to how her training and the skills she acquired through it were utilized daily as a nurse at Mountain Institution, then at Kent and currently at Matsqui Health Service where she has worked at the NU-HOS-3 classification level. The grievor testified that her duties have been relatively similar at all three institutions. She gave specific examples of duties where her training as a psychiatric nurse was utilized. Ms. Gervais related an incident that occurred at Mountain where an offender had given her a love letter directed at herself. She was able to deal with the situation with confidence in presenting to the inmate the inappropriateness of his behaviour in an effective manner and ensuring that he obtained counselling from the

supervisor on shift, that he got support and did not hurt himself or others but also ensuring that he understood the inappropriateness of his actions. She indicated that she is often directed questions from peers concerning mental illnesses, and medication related to mental illnesses. She even received calls at home asking for direction on dealing with particular individuals and also requesting affirmation that the procedure they followed was correct.

Ms. Gervais gave an example of her particular knowledge of psychoactive medication in an incident involving Heldol, an injectable medication available for treatment of psychotics. There was an emergency situation where the R.N. was not aware that a side effect of Heldol was muscle rigidity, thus the requirement to also give Cogentin. "I was coming on shift and there was a great deal of activity with an inmate experiencing muscle rigidity following an injection of Heldol. I was able to tell the group that Cogentin was required and the side effect from Heldol was corrected more quickly when this was considered." In the pharmacy the Heldol and Cogentin injectable were placed in separate areas while they should be in close proximity. She proposed changes for the pharmacy.

Ms. Gervais was assigned a secondary job of dealing with offenders with special needs; she had to design a plan of care for offenders not taking care of themselves physically or emotionally, unable to identify stressors in their life, unable to identify that they have needs to be met. She was given this assignment on specific reference from Ms. Nancy Janzen because of her nursing background as an R.P.N. Ms. Gervais gave other examples of uses for her training in her current position at Matsqui Health Service which is an intake facility for offenders from other facilities and which provides 24 hour care.

Ms. Gervais was able to point to duties listed in her job description (Exhibit 3) where psychiatric training was particularly helpful; those were:

- *assuring that inmate receives an initial health screening upon admission to the institution, consisting of a physical assessment for recent trauma or signs of illness and a mental status examination for obvious psychiatric disorders or conditions warranting close observation.*
- ...

- *providing primary nursing care to implement preventative, diagnostic, therapeutic and rehabilitative measures in accordance with clinical protocols and Health Centre policies.*
- ...
- *promoting individual and group well-being through health education activities, including counseling and teaching in structured programs.*
- ...
- *Interviewing inmates in order to assess their health needs, counseling as required regarding treatment, or where necessary, advising that treatment is not indicated.*
- ...
- *The assessment of needs, with subsequent intervention, where warranted, affects the inmate's institutional adjustment, motivation, program participation, quality of life and eventual release from custody.*
- *Health services provided cover both physical and mental health; intervention in crisis situations prevent actions which may result in serious injury or even death.*

The evidence of Ms. Gervais to the effect that she utilized the nursing education acquired in her Psychiatric Nursing training was confirmed by the employer's witness, Gerwyn I. Mills, Executive Director of the Regional Health Centre (Pacific). Both Ms. Gervais and Mr. Mills testified that the Registered Psychiatric Nursing certificates existed from B.C. to Manitoba but were not recognized from Ontario to the Atlantic provinces but they were unable to provide details on nursing certificates in the Eastern provinces.

Mr. Mills introduced the statement of qualifications for the NU-HOS-3 position (Exhibit 5) occupied by the grievor. It is clear from that document that the employer requires experience in nursing care or therapy of patients with psychiatric conditions as well as knowledge of theory and current practices in the application of professional nursing standards in the psychiatric and mental health clinical setting.

Mr. Mills also introduced the statement of qualifications for a Staff Nurse, NU-HOS-2 (Exhibit 4) which requires that incumbents possess either a Registered

Nurse or Registered Psychiatric Nurse registration in British Columbia. To obtain a Health Services Staff Nurse, NU-HOS-3 position, a nurse requires registration as a Registered Nurse in the province of British Columbia. Mr. Mills explained that all staff nurse positions covered by Exhibit 4, are located at the Regional Health Care Centre which is a fully accredited Psychiatric Hospital. Mr. Mills confirmed the grievor's evidence that the R.P.N. training is a two-year training program where one year is the same as for the R.N. training but where the second year focuses on dealing with psychiatric patients while the R.N. training is more directed to care for the physical needs in anatomy, physiology, biology with more time on surgery, orthopedic, labour, obstetrics, gerontology and the whole range of nursing. The R.P.N. is trained to treat psychiatric patients and some of their physical ailments while the R.N. is trained to care for the general population of physical disorders and some mental illness.

Mr. Mills testified that he made the decision to deny the grievor the education allowance after his recommendation that nurses who have both nursing certificates be given an allowance of \$360. per year, was rejected on the basis of a memo issued in 1987 and brought to his attention in 1997. Mr. Mills wasn't clear why he had picked this amount; he believed he might have consulted an erroneous chart either out-of-date or not yet in force. Mr. Mills also testified that the education allowance, that had always been paid to Nurse Nancy Janzen, the Acting Chief of Health Care, on the basis of her dual registration, was discontinued as of September 1997. Ms. Janzen had been supporting the grievor's attempts to obtain the allowance since January 1994. She had written a memo to the Deputy Warden, J. Boileau (Exhibit 2, tab 4) indicating that Holly Gervais had two nursing diplomas and:

Somehow, as she was "processed" through Pay and Benefits at the start of her employment, this was not recognized and therefore she has not received the applicable education allowance.

(Exhibit 2, tab 5)

It appears that initially the employer was disputing that Ms. Gervais' duties provided for the utilization of her psychiatric nursing training. Later on following a review of her duties and in light of her supervisor's support and the fact that Mr. Mills had recommended that a psychiatric nurse in each Health Centre be assigned to assist in the dealings with inmates having psychiatric or personality problems, the

employer's position became that R.N. and R.P.N. nursing certifications are not post-graduate one to the other, nor are they specialty training one to the other. This is based on a memo issued in 1987 by a M.B. Bauder, Staff Relations Officer, NHQ, Ottawa after consultation with the Treasury Board negotiator (Exhibit 9).

Arguments for the Grievor

Mr. Reniers' position was that the issue is whether the education or training of the grievor is used in the course of her employment; if she is using the skills and knowledge acquired through her education, then the employer is required to pay the allowance. What is important is not whether the employer requires that training; the clause acknowledges that nurses who have additional training add value to their work and therefore are paid for it.

Mr. Reniers pointed out that Mr. Mills' testimony was to the effect that psychiatric nursing was a specialization, that nurses with R.P.N. training would have added knowledge that an R.N. would not have. He also pointed out that Ms. Gervais has demonstrated skills, techniques and knowledge she used in her past and current position. In particular, he raised the examples she used of the "heldol" incident, the response to the lovelorn inmate and the fact that Ms. Gervais is used by her colleagues without R.P.N. training as a resource in dealing with patients with mental illnesses.

Mr. Reniers argued that nothing turned on the fact that the grievor did the R.P.N. before the R.N. as there was one year in common to both training and in the second year the training is completely different and separate. He relied on *Bainbridge* (Board file 166-2-16132) and on an unreported decision of the *Ottawa Civic Hospital and Ontario Nurses' Association* in the grievance of Rosaleen Rowe by arbitrator Maurice W. Wright, Q.C. In the *Rowe* case the issue was whether courses taken in midwifery prior to a nurse completing her registration constituted a "Post Graduate Nursing Course". The arbitrator had allowed the grievance although midwifery was not recognized in Ontario and he had accepted the training regardless of the sequence of the training.

Arguments for the Employer

The employer argued that nursing training falls into many compartments: obstetrics, pharmacology, geriatric, psychiatry; the issue is not whether the training as R.P.N. adds some value to the grievor's work but whether it attracts a special allowance. There are many types of education that could help do a better job i.e. "social work", could be put to use in a correctional environment. What was in the mind of the parties when paragraph B was adopted is what counts.

There are two kinds of entry-level training, in British Columbia, for nurses: Registered Psychiatric Nursing for NU 2 and Registered Nursing for NU 2 or NU 3. The R.P.N. training does not give an R.N. additional opportunity but the opposite is true for the other way around. The R.N. may not be in some areas as qualified as an R.P.N. but there is no area where there is a specific request for R.P.N. As we know, R.P.N. is recognized only in half the country, that is, West of Ontario.

Mr. Newman argued that what we have here is a situation where we don't have post-graduate training. Both strands of nursing training are entry-level training. R.P.N. is not an add-on to R.N. training. We heard that it is not a specialty to R.N. training. It is a separate stream. We have no knowledge of what is happening in Ontario or Quebec where Registered Psychiatric Nursing does not exist. Mr. Newman argued that R.P.N. is recognized as basic professional training but not training in addition to the basic training and that the allowance is for another type of training in addition to R.N. The fact that the grievor is able to use the training is "so much the better" but it is not required, nor recognized. It is not what was intended; it is not a specific course of nursing studies. Likewise, a doctorate in psychology would also add value, but it is not nursing training, although it is post-graduate. Mr. Newman stressed that the time frames do indicate that we are not dealing with intricate training in nursing as specialty courses but with basic training.

An R.P.N., also subject to the Pay Notes, may have taken a three month course in schizophrenia or a specialized course for R.N. in psychiatric training, something in addition to basic training; this would attract the allowance.

Mr. Newman argued that there is no evidence to show that dual registration ever attracted the allowance except for Ms. Janzen. In 1987 a ruling was obtained but

it is possible some people fell through cracks. Mr. Mills has taken steps with regards to Ms. Janzen but it is possible somebody is still getting the allowance. However, it was not intended and has not been paid in the Public Service since 1987. Perhaps there should be an allowance but this is subject to negotiation.

Mr. Newman made a comparison with legal studies, the LL.L. compared to the LL.B.; one cannot say they are a specialty or post-graduate to one another.

Mr. Newman argued that the *Ottawa Civic Hospital* case is not relevant to this case. It is not appropriate to look at other collective agreements with different language. He relied on the decision of adjudicator Roger Young in *Bainbridge* (supra) who states on page 17 in the second paragraph:

It is not a matter of any one-year university course in "Administration" which qualifies, or any one-year university course in "Teaching and Supervision". It is post-graduate nursing training or post-graduate nursing education which then must be utilized in the performance of nursing duties to be compensable.

Mr. Newman argued that negotiation is the appropriate place to deal with this situation. It is not just a question of adding value.

Grievor's Reply

Mr. Reniers responded to the employer's argument stating that Mr. Young in *Bainbridge* (supra) did not address the present issue and there is no evidence of bargaining history that can be gathered from that decision or before this adjudicator that can be used to support the employer's argument.

Mr. Reniers added that his understanding of the French version is that it is quite devastating to Mr. Newman's argument. There is no issue in French that the studies need to be post-graduate to R.N. training. Mr. Reniers pointed out that in an example suggested by Mr. Newman, an R.N. could take a three month course alongside a nurse in R.P.N. (having done so after the R.N.) as opposed to one doing it as part of the original training and as this would be specialized training in psychiatry it could attract an allowance under subparagraph B (a); yet an R.P.N. taking the same or more courses in psychiatry would not qualify if she got her R.N. after. All this he said is sequencing and there is nothing in paragraph B that requires sequencing and it serves

no purpose other than denying the allowance. The English version is not as clear as the French version. The clause must be read in context as a whole.

Decision

There are a number of conditions that must be met before education allowances (a) to (e) under paragraph B become payable. First the nature of the education is crucial and second it must be utilized in the performance of the duties of the position.

It is clear that the employer was no longer disputing that the grievor did utilize her Registered Psychiatric Nursing training in the performance of the duties of her position. Indeed, the employer introduced the statement of qualifications for the grievor's position which makes it quite clear that psychiatric nursing experience is a requirement of the job. The grievor's testimony was unchallenged on the fact that she did utilize her training for her duties almost daily.

The issue is whether the R.P.N. training of the grievor constitutes "post-graduate nursing training or nursing education" within the meaning of paragraph B. The employer takes the position that the education must not only be nursing education but also post-graduate nursing training. The grievor's position is that it can be one or the other.

The intent of the parties in drafting paragraph B becomes very clear when one reads the French version: *Lorsque les éléments suivants de formation en sciences infirmières ou d'instruction post-scolaire en sciences infirmières sont utilisés dans l'exercice de leurs fonctions.*

In the French version the expression "post-graduate" was not intended to qualify all of nursing education and training but is included in what must be considered. Adjudicator Young was faced with the issue of interpreting what constitutes nursing training or nursing education in *Bainbridge* (Board file 166-2-16132) where a grievor was seeking to be paid an allowance for the Bachelor of Education degree which she utilized in her duties of teaching health classes to students in grades three to eight in addition to holding prenatal, first aid and

nutrition classes and other workshops in the community where she worked. The adjudicator found that:

The preamble is one which limits or narrows the focus of the clause; it is not a “deeming” provision which gathers in and equates with nursing a number of otherwise unrelated matters. The allowance has been made available for those who have acquired a nursing-specific, job-related education which is then put to use in the fulfillment of those particular duties attached to specified positions.

Adjudicator Young was not called upon to determine whether nursing training or nursing education had to be post-graduate to the basic Nursing Registration and I don't take as determinative of the current issue his sentence: *It is post-graduate nursing training or post-graduate nursing education which then must be utilized in the performance of nursing duties to be compensable.* What he had to determine was whether a Bachelor's degree in education constituted nursing education or nursing training and he found that it did not. In the present case the evidence is that the Registered Psychiatric Nursing certificate and the Registered Nursing certificate are two streams of the “sciences infirmières” which are recognized from B.C. to Manitoba. We have no evidence of how nurses are trained East of Manitoba, nor how the training of western nurses is recognized in Quebec or Ontario; we only know that the R.P.N. certificate by itself is not accepted to register a nurse in those provinces.

The evidence with regard to British Columbia is that basic nursing training or nursing education can follow two streams: the general which focuses on physical illness but also contains a module to deal with mental illnesses and psychiatric nursing which consists of a first year which is the same as for the general stream but in which the second year focuses on mental illnesses. The grievor's training in psychiatric nursing contained 16 months of training which was not considered to qualify for an R.N. certificate. As the grievor submitted proof of registration of her training in Psychiatric Nursing she therefore has proven that she has what is considered in British Columbia to be a year or twelve months of psychiatric nursing separate or above her Registered Nursing certificate. She is therefore entitled to the education allowance under subparagraph B (b) in the amount of \$475.

As for the argument that the interpretation of the clause given by the Staff Relations Officer should prevail until the parties renegotiate the agreement I must

reject it. The language of the agreement is clear when it is read in both languages. There was no cogent evidence provided that would indicate that a consistent application of that interpretation was made. Certainly the example of Ms. Janzen who saw her allowance discontinued shortly after the final level reply was issued is an illustration that the memo of 1987 was not widely known on the employer's side, nor was there any evidence submitted that would indicate that the bargaining agent was ever privy to that memo before the Gervais grievance.

For the reasons above the grievance is allowed and the employer is directed to pay Ms. Gervais the education allowance retroactive to January 1, 1994.

**Evelyne Henry,
Deputy Chairperson.**

OTTAWA, September 9, 1998.