



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CHERYL FEDUN AND OTHERS

Grievors

and

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

Employer

Before: [P. Chodos, Vice-Chairperson](#)

For the Grievors: D. Landry, Public Service Alliance of Canada

For the Employer: A. Garneau, Q. C., Counsel

Heard at Calgary, Alberta,
May 5 and 6, 1998.

DECISION

Each of the grievors - Cheryl Fedun (166-2-28278), Arlene Goodall (166-2-28279), Susanna Heinonen (166-2-28280), Myrna Lee Mackenzie (166-2-28281), Barbara O. Obee (166-2-28282), Alice Lynn Prasad (166-2-28283), Marthe Tetrault (166-2-28284), Melveena Ruth Usselman (166-2-28285), Eliana Vieglais (166-2-28286), Donna M. Weitz (166-2-28287), Donald C. Woodroffe (166-2-28288) - has filed a grievance alleging that the employer has not provided him or her with a complete and current statement of duties, contrary to Article M-32 of the Public Service Alliance of Canada/Treasury Board Master Agreement. More particularly, it is the grievors' contention that their current job description does not reflect two sets of duties which they have been performing since January 1996; these duties can be generally described as responding to queries concerning the GST, and dealing with Business Number (BN) Amalgamations. The job description in question (Exhibit G-1) relates to "Trust Compliance Officer" (TCO) positions which are found in Taxation offices across the country.

Ms. Lynn Prasad testified on behalf of the grievors. She has been a PM-01, Trust Compliance Officer, since September 1985. In that capacity she had been dealing with payroll matters, that is, source deduction problems from an inventory of accounts based on an alpha sort. However, since January 15, 1996, she also became responsible for responding to queries concerning the GST which came in over the telephone, through correspondence, as well as enquiries made in person. Ms. Prasad testified that she receives approximately 20 to 100 calls a day; each enquiry requires a minimum of five minutes, to several weeks to resolve. She estimated that from 40 to 50 percent of her time is spent on responding to GST enquiries.

A simple enquiry might involve the receipt of a notice indicating that the recipient had not filed a GST return. Ms. Prasad would obtain the account number from the caller, access the tombstone data from her computer, and verify that the person calling was someone to whom they were permitted to release confidential information. She would then go to a different screen on the computer and verify whether the return had been received. If it had, that would end the matter. She would simply make a marginal entry indicating the reason why she had accessed the account. An example of a more complex matter would be a client seeking to make an adjustment on a return. A TCO would receive a request in writing seeking the change, with a brief explanation. Upon receipt of this written documentation, the TCO would

complete an adjustment form and forward that to a Resource Officer for review. The Resource Officer would make changes to the form if it was in error; if not, he or she would initial the form and send it back to the Trust Compliance Officer, who would either forward it to the Summerside Taxation Centre or send it to the GST Audit Group in Selkirk House, depending on the amount of money involved in the proposed change; if it was over \$1,000. it would be forwarded to the GST Audit Group. If the Audit Group had any additional questions, the Trust Compliance Officer would contact the client for further information. If the Audit Group approved the change, it would be sent back to the TCO who would then forward it to Summerside. This whole process could take several weeks, although it is difficult to say how much time in total would be spent on this kind of enquiry.

Ms. Prasad maintained that the TCO job description, which under the heading KEY ACTIVITIES, refers to, among other things, "*Enforcing the provisions of various Acts, Regulations and Agreements related to Trust Accounts.*" does not really encompass the work they do concerning GST enquiries. In her view, they are not enforcing anything when answering these enquiries, nor are they making initial contact with the client.

With respect to Business Number Amalgamations, Ms. Prasad observed that while she was involved in this responsibility before January 1996, the degree of work involved changed dramatically at that time. Prior to 1996, when a client asked for a Certificate of Amalgamation, she would document it on the account and forward it to her supervisors; they would receive the Certificate of Amalgamation, change the name on the account and advise the client by letter; this would occur about two or three times a month. After 1996, there was a dramatic increase in volume, as many as six or seven per month; the work became more complex and the TCO's were required to take full responsibility for it. A business amalgamation would enter their inventory from the Winnipeg Tax Centre on an alpha sort basis via their computer, or would be referred to them from Client Assistance, or there would be direct contact from a client over the telephone. One routine example would arise where two companies were amalgamating into a third company; the TCO would contact the client to determine if there was a successor account, i.e. whether the company was retaining most of the employees and therefore wished to keep the payment history on the new business number. Alternatively, the account could become redundant when the company was

laying off most of the employees. When establishing a successor account, the TCO must move all of the pay history into the new account and inform the client of that new account. A routine case would take twenty minutes to two hours to review the accounts, contact the client, verify the information and check the history, as well as make all the necessary notations on all the accounts, and notify the client of the new account. An example of a more complex case would be five different companies amalgamating; shortly thereafter, the new company would be sold, and reamalgamated with another company, which would then amalgamate with yet another company. Initially five different people would have to be contacted from each individual company; the TCO would have to coordinate an action plan agreeable to the five individuals, ensuring that it complied with government regulations. The TCO would help the individuals draft letters noting the amounts which needed to be transferred. The TCO would open one account, transfer the funds from the five different accounts to the one account, obtain the T-4's for the old accounts, obtain the name of the new corporation as well as the appropriate registry information in order to get the exact date of the formation of the new company. The TCO would then issue a new Certificate of Amalgamation and make sure that all the accounts balanced, so they could be closed out. It could take as much as four months to resolve this kind of case.

Ms. Prasad noted that she would be required to do this work entirely on her own; there was no one to consult, other than a co-worker. From January, 1996 until January, 1997, Ms. Prasad estimated that she spent 20% of her time on business amalgamations.

In cross-examination, Ms. Prasad noted that after 1996 corporations had one number in respect of GST, payroll, customs, etc. At that time, GST was added to the payroll group, as a result of which the TCO's were responsible for the GST enquiry lines. This occurred as a result of the amalgamation of the Departments of Customs and Excise with Taxation.

Ms. Prasad was referred to the paragraph in Exhibit G-1 entitled "CLIENT SERVICES RESULTS", and in particular the reference to "*The administration ... of Trust accounts*"; she agreed that trust accounts include such matters as the GST, and that "*the administration*" of these accounts would include business number

amalgamations. She agreed that to some extent the TCO's are required to "reinitiate" a call concerning GST in order to resolve an enquiry. With respect to "Examining client accounts ..." under KEY ACTIVITIES, TCO's do not necessarily determine the degree of deficiencies, unless the client contacts them. She also acknowledged that in responding to GST enquiries and business number amalgamations the TCO's are "adjusting and/or correcting returns ..." in order to resolve accounts; also, they determine "discrepancies, non compliance ..." as noted under subheading "Thinking Challenges". Ms. Prasad noted that she is not a GST enforcement officer, which is the responsibility of the Collections Section, nor do TCO's determine the amount of deficiencies in respect of the examination of client accounts. Furthermore, they are not responsible for "adjusting returns", which is performed by the staff at Summerside. With respect to business number amalgamations, she estimated that less than half a percent of her time is involved in correspondence, as described under "Thinking Challenges".

Ms. Melveena Usselman is one of the grievors; she has been employed with the Department for 23 years and has been a Trust Compliance Officer since January 1990. She estimated that since January 15, 1996, 50% of her work-day is spent dealing with GST enquiries. A more complex example of such enquiries would involve the transfer of payments and returns from a single proprietorship account to a limited entity; the TCO would have to clarify the incorporation date of the company, which may require seeking from the client a copy of the corporate registry. The TCO would also have to refer to the corporate T-2 account to ensure that both accounts have the correct fiscal year ending; the TCO would then input a stop code to ensure that no refund would be issued on the former proprietorship account. The TCO would also have to enter the date on which the proprietorship ceased to operate, and ensure the client was aware of the filing and remitting requirements. The client would then have to send in a GST-11 form requesting the closing of the account, and a GST-44 form notifying the Department about the assets of the business of the proprietorship. Her role would be to advise the clients that they have to complete and send in these forms. She would ensure the corporation account was now in order by going back into the GST system to confirm that the correct transfers were made. She stated that this work would be performed over two or three days, requiring 45 minutes per day.

With Business Number Amalgamations, Ms. Usselman noted that the work is cyclical; between January and April she would be required to process between ten to 15 cases; from July to September, she could do anywhere from one to ten per week, with very few after September. She noted that a simple business amalgamation would take one hour in total, when all the information is readily available and involves only a transfer and a closing out of a file. Where for example there are four separate legal entities, each involved in payroll deductions, one could have separate business numbers for each, some of which may have a reduced rate for UIC premiums. The company's internal auditor may be requesting four new business numbers because the company has amalgamated with another company; he may request that all funds be transferred from the old accounts to the new business numbers. The companies might send to Winnipeg eight sets of T-4's; once Winnipeg processes all the T-4's, and posts the changes to the eight accounts, the TCO would then have to delete the T-4's from the old accounts and post them to the new accounts. She would also check that there is no "PIER" notations (i.e. "Pensionable and Insurable Earnings Review"), in order to ensure that there are no errors in deductions. She would then close out the old accounts, ensuring the proper remitting codes are used for the new accounts. The TCO would monitor the new accounts for several months to ensure that payments are in order. If there is a problem, the TCO would contact the company controller and ask for copies of all their payments which were sent to all four accounts; the TCO would then ensure that the proper amount of money was applied to the right accounts. If there appeared to be a problem, the TCO would refer all the accounts to the payroll auditor. This kind of problem has taken her ten minutes per week for each of the eight accounts, over the last three and a half months.

The grievor noted that prior to January 1996, she worked strictly on payroll deductions; from January 1996 she spent about 50% of her time on GST enquiries; and eight to ten hours per month on amalgamations.

In cross-examination, Ms. Usselman acknowledged that the administration of trust accounts includes both the GST and payroll, and her work on business amalgamation involves payroll deductions.

Ms. Susanna Heinonen has been a Trust Compliance Officer since 1990. She noted that the number of GST enquiries varies on a cyclical basis; GST returns are due

March 31st, and accordingly the number of enquiries increases during the summer months in response to notices of delinquent accounts. On average she receives between 15 and 100 calls per day. She estimated that between 30 and 40% of her week is devoted to GST enquiries. Frequently clients may call up to explain outstanding balances in their accounts; this would require calling up different file periods on different screens; she noted that discrepancies can vary considerably; for example, there can be an error in filing, or a filing for a wrong period, or alternatively revenue may go to the wrong tax account. For monthly filers, she would have to check at least 12 screens, and it could take several weeks to obtain an answer for the client.

Ms. Heinonen estimated that she spends approximately 10 to 20 percent of her time on Business Number Amalgamations. Some particularly complicated amalgamations can take up to one year to resolve. For example, in respect of an amalgamation of an energy company, there were 20 to 30 payroll accounts from various divisions. She was required to contact someone from each division to determine whether he or she wished to continue his or her business number; she also had to liaise with the new entity to ensure that they were of the same view. It was her responsibility to ensure that the payments were going to the proper new account; she would then transfer the accounts to the new number. She noted that prior to 1996, when a company amalgamated, it was considered to be a continuing entity, with the same account. At that time, the accounts were supervised by her superiors; now the TCO's have to ensure on their own that the funds have been properly transferred, and so forth. The Business Number Amalgamations are much more frequent now and considerably more complex.

Mr. Carey Baranowski also testified on behalf of the grievors. Mr. Baranowski has been employed in the Calgary Tax Services Office since November 1989; he has been the Chief Shop Steward since 1993. Mr. Baranowski identified a letter addressed to the Trust Compliance Officers from Ms. Donna Weitz, the President of the Taxation local, which he received in December 1996 (Exhibit G-2). The letter observes that the Trust Compliance Officers were not supposed to have responsibility for the GST enquiry lines and the BN Amalgamations; it goes on to state that:

Accordingly, we recommend that if members are REQUESTED to perform these functions that they should initially refuse the request until such time as these functions are properly

included in the current PMI Trust Compliance Officer Job Description.

According to Mr. Baranowski, when these duties were assigned to the TCO's in January 1996 they were to be of a temporary nature; however, in late November 1996 the TCO's were advised that this would be a permanent part of their duties; this precipitated the issuance of Exhibit G-2 by the bargaining agent. In response, Mr. Phillip McCutchan issued a memorandum dated December 6, 1996 (Exhibit G-3) which stated that:

It is the Employer's view that the duties of responding to the GST enquiries lines and the BN amalgamations is contained within the job descriptions of which all compliance officers have copies. ...

As such, I am instructing all trust compliance officers that, as part of their duties and job descriptions, they are to continue to provide service to our clients to resolve the clients' GST enquiries ... and that the trust compliance officers are to take all appropriate measures to resolve BN amalgamation issues.

There was a consultation meeting between Ms. Weitz and Mr. McCutchan in mid-December for the purpose of resolving this issue. According to Mr. Baranowski, Mr. McCutchan offered to draft an addendum to the TCO job description spelling out their duties in respect of GST enquiries and the BN amalgamations. Mr. Baranowski referred to an e-mail dated December 15, 1996 from Mr. McCutchan to Michele Luit, the Assistant Director of Human Resources (Exhibit G-4), which sets out the language for the proposed addendum:

Addendum: For greater certainty, resolving telephone enquiries from clients with respect to GST matters is a duty outlined in job number PM-0335, Trust Compliance Officer, with an effective date of June 1, 1994. Local and 1-800 telephone lines, and written correspondence procedures have been established within the Revenue Collections Division to assist clients in resolving issues related to their GST accounts or to answer questions regarding the application of the Excise Tax Act. Trust Compliance Officers are to endeavor to provide all necessary information to clients to assist them in honouring their obligations or receiving all entitlements; or to make the necessary referrals to other areas of the Department to satisfy the clients' concerns.

On January 29, 1997 Mr. McCutchan sent a memo to the Trust Compliance Officers in which he notes that:

...

As my memorandum of December 5, 1996, indicated, the duties of responding to the GST enquiries lines and the BN amalgamation workload are duties that currently exist within the job description. As such, an addendum will not be added to the job description.

(Exhibit G-5)

Mr. Baranowski observed that the employees continued to feel that these duties should be specifically added to their job description. The bargaining agent advised them to file the subject grievances.

Mr. McCutchan testified on behalf of the employer. He has been the Assistant Director of Revenue Collections at the Calgary Taxation Services Office since September 30, 1996. Mr. McCutchan noted that the current job description was issued in May or June 1996 retroactive to June 1, 1994. At that time, the Trust Compliance Officer was a new title; they were previously known as Review and Control Officers on the Tax side; the GST office had an officer with similar responsibilities in the Excise department. The TCO position came about as a result of the consolidation of the two departments. The TCO handles account maintenance functions relating to both the GST system and the payroll deduction system. Mr. McCutchan noted that the accounts are referred to as "trust accounts" because under the *Income Tax Act* and the *Excise Act* source deductions are to be held in trust for the Crown.

Mr. McCutchan stated that he received a copy of Exhibit G-2 in December 1996. In November 1996 the bargaining agent informed him about the concerns of the TCO's regarding GST enquiries. The issue was characterized by the bargaining agent as being a workload, rather than a classification issue. Mr. McCutchan stated that it was not his understanding that these responsibilities were to be of a temporary nature. In fact, they were an integral part of two departmental initiatives: the transfer of the enquiries' functions from General Enquiries - Revenue Collections into the Client Services area, which involved a shift of resources to Client Services; also, in April, 1995 there was the consolidation of the two departments, as a result of which GST Enquiries became the responsibility of Revenue Collections. Mr. McCutchan

maintained that the TCO job description took into account the so-called modernization program and the consolidation.

Mr. McCutchan observed that the BN amalgamations were an attempt by the Department to streamline operations in the interest of the Department's clients, by having one principal account number, resulting in the consolidation of all transactions from several old entities into one new entity. He stated that in Exhibit G-3 he noted specifically that these duties are contained in the current job description; for example, the administration and enforcement of trust accounts would include matters relating to the GST. Furthermore, under the KEY ACTIVITIES section of the job description, there is reference to "*interviewing clients*", "*examining client accounts*", as well as a number of other references which in his view enumerated the GST enquiries responsibility very well. He noted that under the subheading *FACTORS AND ELEMENTS* there is a reference to "*Discussing ... discrepancies*" and under *Thinking Challenges* there is a specific reference to "*amalgamations*".

Mr. McCutchan testified that at a meeting on December 10, 1996 with himself and the union representatives, as well as most of the TCO's, a number of issues were discussed, and nine initiatives were proposed in order to resolve outstanding problems. The matter of a job description addendum was one of these nine initiatives (Exhibit E-1); management was asked to put forward this addendum; he undertook to raise it with Human Resources personnel. He received a response in mid-January 1997 from Headquarters Classification staff to the effect that a national job description such as the TCO's, was a headquarters responsibility; in their view, these duties were already described in that job description, and therefore an addendum was not appropriate. They suggested as an alternative a local clarification of the existing duties. As a consequence, he issued Exhibit G-5, wherein among other things, he indicated that there would not be an addendum. Rather, he made the proposed addendum set out in Exhibit G-4 as part of his memorandum respecting the clarification of the duties of the TCO's.

In cross-examination, Mr. McCutchan stated that he was aware of the bargaining agent's position that they were seeking either to add these duties to the job description, or to remove them from the TCO's scope of responsibilities. Mr. McCutchan also observed that, on the advice of Ms. Luit, he prepared the proposed

addendum for consideration by Headquarters; that is, he undertook to explore the possibility of adding the addendum; however, he was told this was the responsibility of the Classification Officers at National Headquarters. Exhibit G-5 reflected the response that he received from Headquarters to the effect that the duties were already described in the current job description.

Mr. McCutchan also maintained that TCO's can enforce the GST, although the bulk of the enforcement work is done out of the Winnipeg office; that is, they do not enforce the GST on a regular basis but rather by way of exception. He also observed that the TCO's do initiate actions, as per page 2 of Exhibit G-1; that is, a company will write the Department advising of amalgamations, and this information will be inputted into the computer. He noted that Exhibit G-1 was signed off by the incumbent employee on October 10, 1996; he agreed that it is a national job description.

Argument

On behalf of the grievors Mr. Landry submitted that the evidence demonstrates that the grievors performed the duties in question consistently and often since January 1996. While the Business Number amalgamations responsibilities were done previously, the TCO's did not have direct responsibility for them, and they were performed by the grievors on a much less frequent basis. Since January 1996 they are performed regularly by the grievors, and they have direct responsibility.

Mr. Landry argued that as a result of the structural changes in 1995 the employees were given additional duties which have not been reflected in their job description. This was implicitly recognized by local management when it proposed an addendum to Exhibit G-1. This was rejected by senior management who in essence maintained that the current job description could not be touched. The grievors' representative cited the *Taylor* decision (Board file 166-2-20396), which noted that the employees have the right to a complete and current job description; Mr. Landry suggested that this means that job descriptions cannot be merely a national, generic description. He noted that job descriptions have important consequences in respect of classification. In contrast to the *Taylor* case (*supra*), the functions in question here are not performed on an "intermittent" basis. Mr. Landry also referred to *Littlewood et*

al. (Board file 166-2-16044) which notes that a job description must reflect all of the regular duties.

Counsel for the employer agreed that the *Taylor* case (*supra*) is relevant to this issue; the question to be addressed here is whether the job description currently and accurately describes the duties being performed when this matter arose in the fall of 1996. Mr. Garneau noted that Exhibit G-1 was prepared over an extended period of time, and was signed off by the grievors in October 1996. This job description was drafted in the context of the modernization and consolidation which began in 1995, and resulted in the GST accounts merging into the Taxation function.

Counsel submitted that Mr. McCutchan's testimony demonstrates that the duties respecting GST enquiries and the BN amalgamations were considered and incorporated into the current job descriptions. When this matter was raised in December 1996, Mr. McCutchan had replied that they were already contained in the job description; he detailed how they were so described throughout Exhibit G-1. Mr. Garneau suggested that the grievors have not disputed this evidence, other than to submit that perhaps the GST enquiries and amalgamations are not specifically identified.

Reasons for Decision

This case addresses whether the grievors' current job description, that is Exhibit G-1, meets the employer's obligations as set out in Article M-32 of the relevant collective agreement, which provides as follows:

ARTICLE M-32

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 or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.

The point of contention between the parties is whether the GST enquiries and the BN amalgamations responsibilities, which as of January 1996 became a significant part of the employees' workload, are accurately and fully reflected in Exhibit G-1.

Upon carefully reviewing the evidence of the grievors concerning the nature of their duties and responsibilities in respect of GST enquiries and BN amalgamations, and comparing this evidence with Exhibit G-1, I have concluded that these duties are fairly and accurately subsumed by their current job description.

It does appear that as of January 1996, the volume of work associated with these two areas of responsibility increased considerably. However, this does not, *per se* give rise to an inference that the nature of their duties changed in a substantive way. It is not unusual for job descriptions (particularly those that are intended to be applicable to a number of positions across the country) to be written in fairly broad language. As Adjudicator Young observed in the *Taylor* decision (*supra*) (at page 14):

... the statement may not be incomplete in the sense that it omits to make reference to a particular duty or responsibility which the employee is otherwise required to perform. It does not, however, mean that the statement must spell out in infinite detail every possible variation, combination or permutation of how a function is performed.

In this instance, the job description notes at the outset that the incumbents of the positions are responsible for “*The administration and enforcement of Trust accounts. Resolution of client problems relating to their accounts and to the enforcement of the filing requirements.*” The rest of the document expands upon this general statement; thus, under KEY ACTIVITIES it speaks of “*Interviewing clients ... by telephone or in the office, in order to resolve outstanding accounts.*”; and “*Examining client accounts ... to determine the degree of deficiency ...*”; further down it states “*Adjusting and/or correcting returns to effect account resolution.*” In my view it is clear from these references, as well as others in Exhibit G-1, that the grievors’ responsibilities with respect to GST enquiries and BN amalgamations are “captured” by their job description.

I do not believe that the above conclusion is in any way diminished by Mr. McCutchan’s undertaking to consider putting forward an addendum in the language set out in Exhibit G-4. The evidence demonstrates that Mr. McCutchan consistently took the view that any proposals for an addendum did not necessarily mean that their duties were not fully described in Exhibit G-1. Furthermore, apparently this job description was completed in May or June, 1996, several months

after the grievors' assumption of these duties in January, 1996. More importantly, however, Exhibit G-1 speaks for itself; even given the narrowest possible interpretation, one cannot help but conclude that Exhibit G-1 is a fair and current statement of the duties and responsibilities of the Trust Compliance Officers, as outlined by the grievors in their testimony.

Accordingly, these grievances must be denied.

**P. Chodos,
Vice-Chairperson.**

OTTAWA, June 11, 1998.