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File: 166-2-29400

Citation: 2000 PSSRB 44



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JOHN A. WOODWARD

Grievor

and

**TREASURY BOARD
(Fisheries and Oceans Canada)**

Employer

Before: [Jean Charles Cloutier, Board Member](#)

For the Grievor: [J.R. Hazeldean, Professional Institute of the Public Service
of Canada](#)

For the Employer: [Asha M. Kurian, Counsel](#)

Heard at Ottawa, Ontario,
April 4, 2000.

DECISION

[1] John A. Woodward was employed as an Environmental Assessment Officer, in the Physical Sciences Group, at Fisheries and Oceans Canada. Mr. Woodward grieved the effective date of the reclassification of his position.

[2] The grievance, which was submitted to the employer on August 13, 1998, reads as follows:

I grieve the effective date of my reclassification from PC-02 to PC-03. In view of the fact that my duties have been unchanged since January 9th, 1995 this should be the effective date.

[3] The corrective action requested is:

My reclassification from PC-02 to PC-03 should be effective retroactively to January 9, 1995.

[4] The first level reply, dated June 24, 1999, reads as follows:

This is in response to your grievance filed 4 August, 1998 in which you grieved the effective date of your reclassification from a PC-02 to a PC-03. As you know, the work description for the position of Environmental Assessment Officer has been audited. As a result of the audit, the position was downgraded from a PC-03 group and level to a PC-02 group and level, effective 1 April, 1999. Therefore, I am denying your grievance.

[5] The final level reply is dated November 5, 1999 (almost 15 months after the grievance was filed) and reads as follows:

This letter is the final level response to your grievance of August 13, 1998 regarding the effective date of the reclassification of the position of NWPA Environmental Assessment Officer from PC-02 to PC-03.

Your grievance was discussed with you and your union representative at a meeting on September 1, 1999. I have considered the representations made at this meeting as well as all other available information.

You allege that the duties of the reclassified NWPA Environmental Assessment Officer position were the same as those you had performed since your appointment to the position on January 9, 1995. You are requesting that the reclassification from PC-02 to PC-03 be made effective retroactive to January 9, 1995.

A review of the position revealed that there was no significant difference between the work description written in 1994 to create the position and the work description written in 1998 to reclassify the position. Therefore, in order to determine the proper classification for the position, the corporate classification unit was asked to conduct a review of the position. The results of this review indicated that the position of NWP Environmental Assessment Officer was correctly classified at the PC-02 level and should not have been reclassified to the PC-03 level. Consequently, action was taken to reclassify the position to the PC-02 level effective April 1, 1999.

In deciding what effective date to use to downgrade the position to its proper level, consideration was given to the fact that you had already been promoted to the PC-03 level and had deployed to another department at this level effective March 8, 1999. In order not to affect your promotion and subsequent deployment, April 1, 1999 was selected as the effective date for the downgrading.

In view of the foregoing, I consider that it would be inappropriate for me to intervene in this matter and grant you the corrective action requested. Your grievance is therefore denied.

[6] The facts of this case are not in dispute. The parties filed an Agreed Statement of Facts, dated April 3, 2000, which reads as follows:

Agreed Statement of Facts

*Adjudication Hearing 166-2-29400
RE: J.A. Woodward*

The parties have agreed to submit the following information which is not in dispute concerning the above noted grievance:

- 1. April 1994 - A new position was created with the Coast Guard - PC-02, NWP Environmental Assessment Officer, position number 6802.*
- 2. January 9, 1995 - Mr. Woodward was appointed to position number 6802 (see Attachment "A").*
- 3. April 1, 1997 - The position was transferred from the Coast Guard to the Science Sector as part of the transfer of responsibility for environmental*

assessment functions associated with the Navigable Waters Protection Act.

4. *May 1, 1998 - A new work description was written for position number 6802 and submitted for proposed reclassification to the PC-03 level.*
5. *July 23, 1998 - Position number 6802 was reclassified to the PC-03 level, retroactive to November 1, 1997.*
6. *August 4, 1998 - Mr. Woodward submits a grievance at the first level of the grievance procedure. Mr. Woodward grieved that the effective date of the reclassification should be January 1995.*
7. *March 8, 1999 - Mr. Woodward was deployed to a PC-03 position with the Canadian Environmental Assessment Agency.*
8. *March 1999 - The PC-03 work description is reviewed by the Regional Classification Officer, Lee Schooley, who concludes that there is no significant difference between the PC-02 and PC-03 work descriptions and that the position should be classified at the PC-02. Mr. Schooley requests an independent classification review of the position by the Headquarters Organization, Classification and Compensation Branch (see Attachment "B").*
9. *April 15, 1999 - Position number 6802 was reviewed by Anne Charbonneau at the Headquarters Organization, Classification and Compensation. Ms. Charbonneau rendered an opinion that the position should be reclassified at the PC-02 level (see Attachment "C").*
10. *April 30, 1999 - The position was downgraded from PC-03 to PC-02. Mr. Woodward at this time had already been promoted to the PC-03 level and had been deployed to another department at this level effective March 8, 1999. In order not to affect the promotion and subsequent deployment, April 1, 1999 was selected as the effective date for the downgrading (see Attachment "D").*
11. *November 5, 1999 - Mr. Woodward's grievance was denied at the final level. Mr. Woodward did not pursue the classification aspect of his grievance beyond that point.*

12. *There was no significant difference between the work description written in 1994 to create the position and the work description written in 1998 to reclassify the position.*
13. *There was no significant difference in the duties performed by Mr. Woodward between January 9, 1995 and March 8, 1999.*

The parties reserve the right to lead additional documentary and viva voce evidence in support of their respective positions.

...

(Note: Attachments "A" to "D", inclusive, have not been reproduced.)

[7] This grievance was referred to adjudication on December 2, 1999.

[8] Mr. Hazeldean, the grievor's representative, introduced 23 exhibits and the grievor was the only witness called by him.

[9] Ms. Kurian, counsel for the employer, did not introduce any exhibits and called one witness, Lee Schooley, a human resources advisor from Sarnia.

Evidence

[10] The evidence from both parties can be summarized as follows.

[11] Both witnesses confirmed the Agreed Statement of Facts as relating exactly what happened.

[12] The grievor accepted and was appointed to a PC-02 position on January 9, 1995. The grievor and his position were moved to Fisheries and Oceans Canada. The grievor obtained permission from his supervisor to rewrite his job description to better reflect the work that he was performing. In late 1997, the new job description was submitted and signed off as being a true reflection of the duties being performed.

[13] On May 1, 1998, the new job description was formally approved by management and sent for classification.

[14] On July 23, 1998, the position was reclassified from a PC-02 to a PC-03, with a retroactive date of November 1, 1997.

[15] On August 23, 1998, the grievor filed the grievance as stated above.

[16] The grievor was told that he would be reclassified and that the backdating date would be established in conjunction with the biologists who were in a similar situation.

[17] Pay retroactive to April 1, 1993 was given to 10 biologists but not to the grievor.

[18] Correspondence relating to all the events was filed as Exhibits G-7 to G-18, inclusive.

[19] Only after the grievor left the Department was the position looked at once again and downgraded to PC-02, in April 1999.

[20] The employer's witness stated that the effective date of the reclassification to PC-02 was chosen to accommodate the grievor and to protect his appointment and lateral transfer.

[21] Both witnesses stated that the job descriptions classified at the PC-03 level and the PC-02 level were the same and that the grievor was performing those duties.

Arguments

For the Grievor

[22] The arguments made by the grievor's representative may be summarized as follows:

- (a) The grievor had been performing the same duties from January 9, 1995 until his departure from the Department on March 8, 1999.
- (b) The grievor was no longer an employee of the Department when the position was downgraded to PC-02.
- (c) Exhibits G-21 and G-22 show clearly that the grievor was reclassified to a PC-03 and his Manager, J.N. Stein, determined that he met the requirements of the PC-03 position.
- (d) Management delayed the process of reclassifying the position for months, giving many reasons, such as doing it with the biologists, who were in the same situation and did obtain retroactivity to 1993.

- (e) The grievor is not challenging the classification but the retroactivity. He did perform all the duties of a PC-03, as per the job description, from January 9, 1995.
- (f) From all the memoranda and conversations, the grievor had a reasonable expectation to believe his pay at the PC-03 level would begin on January 9, 1995.
- (g) The grievor relied on receiving this retroactive pay from January 9, 1995, due to the acceptance from his superiors that he had been performing the duties of a PC-03.
- (h) Management is a victim of its own mistake and is responsible for the delays.
- (i) The reclassification/downgrading to a PC-02 in 1999 was only done to try to cover up the situation.
- (j) In conclusion, it is requested that the grievor be paid at the PC-03 level from January 9, 1995.

For the Employer

[23] The arguments made by counsel for the employer may be summarized as follows:

- (a) The reclassification of the position from PC-02 to PC-03 in July 1998 done by B. Couture was a mistake.
- (b) The independent review reclassification by Anne Charbonneau in April 1999 is the only one that really reflects the duties of the position.
- (c) Witness Lee Schooley was always of the opinion that this job description should be at the PC-02 level and not at the PC-03 level.
- (d) The contents of the job description were, in January 1995, the same as the contents of the job description classified at the PC-02 level in November 1997.
- (e) I was referred to the final level grievance reply by the Acting Assistant Deputy Minister who clearly states in the fourth paragraph that the position “should not have been reclassified to the PC-03 level”.

- (f) I was referred to paragraph 5, page 2, of the final level reply by the ADM:

In deciding what effective date to use to downgrade the position to its proper level, consideration was given to the fact that you had already been promoted to the PC-03 level and had deployed to another department at this level effective March 8, 1999. In order not to affect your promotion and subsequent deployment, April 1, 1999 was selected as the effective date for the downgrading.

- (g) The employer made a mistake, corrected it and, in consideration for the grievor, did not downgrade the position retroactively.

[24] Counsel for the employer submitted the following decisions for my consideration: *Gendron* (Board file 166-2-19054); *Nagle* (Board file 166-2-21445); *Charpentier* (Board files 166-2-26197 and 26198); *Dougherty and Others* (Board files 166-2-25137 to 25142 and 166-2-25162); *Brochu v. Canada* [1992] F.C.J. No. 1057; *Canada (National Film Board) v. Coallier* [1983] F.C.J. No. 813.

Reasons for Decision

[25] The parties have agreed upon much of the relevant facts. There is also documentary evidence, which tends to corroborate the grievor's version of what took place from January 9, 1995 to November 5, 1999.

[26] Accordingly, I have no hesitation in finding that the grievor did make representations to management as to the duties he performed from January 9, 1995. In my view, management demonstrated an attitude which is quite disturbing by delaying to reclassify the new job description approved by the grievor's supervisor, J.N. Stein.

[27] Lee Schooley describes the employer's position as being "fair and even generous" towards the grievor by not retroactively dating the downgrading from PC-03 to PC-02 but I also take note that the employer did reclassify biologists retroactively to 1993 while it omitted to do so for the grievor, even though he was led to believe that the actions of backdating would all be handled at the same time. The grievor was left off that list by management.

[28] What requires resolution by virtue of the instant grievance is not the job classification per se but the pay consequences that flow from a reclassification action

from PC-02 to PC-03 on July 23, 1998. In this regard, I refer to the decision of the Federal Court, Trial Division, in *Stagg v. Canada (Treasury Board)* (1993), 71 F.T.R. 307.

[29] The grievor's objective is not to have his position reclassified but rather to be paid according to the work he performed from January 9, 1995. (The applicable pay rate is determined pursuant to Article 16 and Appendix "A" of the collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada for all employees in the Physical Sciences Group: Code 222/91.)

[30] I am not being called upon to make any findings of fact in respect of the duties of the grievor; the employer has already made those findings and determined the classification level (PC-03) which is attributable to those duties during the relevant period of time. I would refer to items 12 and 13 of the Agreed Statement of Facts:

12. There was no significant difference between the work description written in 1994 to create the position and the work description written in 1998 to reclassify the position.

13. There was no significant difference in the duties performed by Mr. Woodward between January 9, 1995 and March 8, 1999.

[31] Both parties agree in item 12 that the work description from 1994 (therefore, January 9, 1995) to 1998 is similar and this is the work description that was classified at the PC-03 level on July 23, 1998.

[32] Both parties agree in item 13 that the duties performed from January 9, 1995 to 1999 were the same.

[33] The fact that this position was subsequently reclassified downward by the employer from the PC-03 level to the PC-02 level effective April 1, 1999, does not affect the grievor's entitlement to be compensated at the higher level prior to that date.

[34] In the result, and for the reasons noted above, this grievance is allowed. The employer is directed to compensate the grievor at the PC-03 salary rate effective from January 9, 1995.

**Jean Charles Cloutier,
Board Member**

OTTAWA, May 12, 2000.