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Public Service
Staff Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JACQUES DÉPAULT

Grievor

and

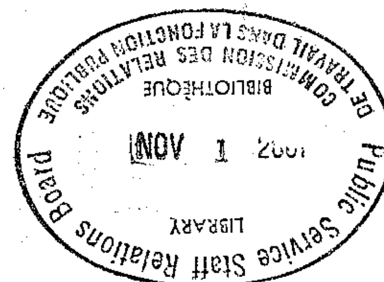
CANADIAN FOOD INSPECTION AGENCY

Employer

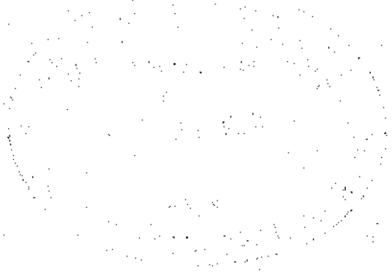
Before: Jean-Pierre Tessier, Board Member

For the Grievor: Pierre Delage, Counsel

For the employer: Jennifer Champagne, Counsel



Heard at Ottawa, Ontario,
July 12 and 13, 2001



[1] The grievor Jacques Dépault holds the position of agronomist, classified at the AG-3 group and level, at the Canadian Food Inspection Agency (CFIA).

[2] On September 11, 2000 he filed a grievance asking that his employer grant him a salary increase.

[3] Mr. Dépault noted that he had been at the maximum of the AG scale for at least twelve (12) months and should thus reach a higher step newly established by the parties that were signatories to the collective agreement entered into on June 16, 2000 between the CFIA and the Professional Institute of the Public Service of Canada (PIPSC) for the Scientific and Analytical Group bargaining unit.

[4] There was simultaneous interpretation at the hearing and a number of documents written in English were adduced in evidence.

[5] During the grievance hearing on July 12, 2001 the parties referred to an *Agreed Statement of Facts* entered into between them on July 10, 2001.

[6] This Statement of facts is contained in the Board file and reads as follows:

[TRANSLATION]

Agreed Statement of Facts

1. *In a document entitled "Memorandum of agreement" signed on October 27, 2000 by Patricia Ballantyne, Director, Staff Relations, with the Canadian Food Inspection Agency, and signed on November 3, 2000 by Bertrand Vlyre, Staff Relations Officer, on behalf of the Professional Institute of the Public Service of Canada, the parties acknowledged that seventy-six (76) grievances had been filed in connection with the interpretation and application of provisions relating to salary increases contained in the collective agreement governing members of the S&A – AG Group signed on June 16, 2000 but coming into force retroactively on October 1, 1999.*

2. *The parties also agreed that only one of the seventy-six (76) grievances should be submitted to the CFIA to be settled and that, if a settlement acceptable to both parties were not reached, the grievance would be submitted to adjudication, with the understanding that the decision of the Public Service Staff Relations Board adjudicator would be applied* mutatis mutandi *to the seventy-five (75) other complainants.*

3. *In a letter dated December 11, 2000, Bertrand Myre submitted to Line Caissie, Senior Staff Relations Advisor at the CFIA, Jacques Dépault's grievance for settlement in accordance with the terms set out in the second paragraph of this document.*

4. *Jacques Dépault is an agronomist at the Canadian Food Inspection Agency and performs AG-03 duties here in the National Capital Region.*

5. *On September 11, 2000, Mr. Dépault filed a grievance under the provisions of the PSSRA. The grievance reads as follows:*

   > *[TRANSLATION]*
   >
   > *On October 1, 1999, I had been at the maximum of the AG salary scale for more than twelve (12) months. I am filing a grievance as a result of my employer's decision not to increase my salary in accordance with the provisions of the collective agreement.*
   >
   > *I am asking that my employer recognize that on October 1, 1999 I had been at the maximum of the AG scale for at least twelve (12) months and that it grant me a salary increase at the maximum rate of the new salary scale.*

6. *Mr. Dépault is represented by the Professional Institute of the Public Service of Canada, his bargaining agent.*

7. *According to Mr. Dépault, all employees who as of October 1, 1999 had been paid at the maximum of their level for at least twelve (12) months, including himself, should have moved automatically to the new maximum step on October 1, 1999.*

8. *For its part, the CFIA maintained the following, as indicated in a letter of April 5, 2001 signed by its Vice-President, Programs, Mr. P. Brackenridge. Starting with the second paragraph:*

   > *[TRANSLATION]*
   >
   > *"Your collective agreement clearly explains the procedure to be followed for pay increases. It provides that the date of the employee's pay increment is the anniversary date of the employee's appointment. Thus, you are to move to the new maximum step on the anniversary date of your appointment to the current position, that is, January 5, 2000.*

> *In light of the above, management's decision to refuse your request appears justified. Your grievance is therefore dismissed."*

> 9. *As indicated in the letter cited in the previous paragraph, Mr. Dépault would move to the new maximum step on January 5, 2000.*
>
> 10. *The point in issue is whether employees are to move automatically to the new maximum step on October 1, 1999 if they had been paid at the maximum of their level for at least twelve (12) months as of the said date - as Mr. Dépault maintained - or whether they must wait for their anniversary date before reaching the new maximum step - as the CFIA maintained.*

[7] Although the Statement of facts referred to other cases similar to that of Mr. Dépault, the parties agreed at the hearing that this decision would apply only to Mr. Dépault's grievance.

The Evidence

[8] Michel Gingras, a negotiator on behalf of the PIPSC since 1995, appearing as a witness for the grievor, explained that for the past several years the PIPSC had been asking that agronomists be paid according to the same salary structure as biologists. An agreement was in fact reached on June 16, 2000, increasing the agronomists' pay retroactively to October 1, 1999 and also to October 1, 2000. In addition, the salary scale, including that of the AG-3s, was extended by one step.

[9] Mr. Gingras noted nonetheless that after the agreement one point of disagreement remained between the parties. In a Memorandum dated August 29, 1999 (Exhibit F-1) he indicated to Georges Nadeau (Manager, Representational Services) that in the PIPSC's view, pay increments should be granted automatically on the anniversary date, and even before that date if the last anniversary increment date was more than 12 months earlier.

[10] Mr. Gingras then referred to the table of new salary scales dated April 7, 2000 (Exhibit F-2) and noted that he had included references to increments on the anniversary date.

[11] Mr. Gingras then referred to the *Treasury Board Manual - Personnel Management Module*, to pages A-16 and A-18 (Exhibit F-4) specifically, to show the terms and conditions for such salary increases.

[12] Mr. Gingras then commented on letters F-5a and F-5b confirming that the *Public Service Terms and Conditions of Employment Regulations* apply to the CFIA.

[13] Exhibits F-6 and F-7 show the dates on which the grievors covered by the agreement did in fact move to the next step (anniversary date) compared to the date the PIPSC was asking for (October 1, 1999 or October 1, 2000).

[14] In closing, Mr. Gingras noted that during collective bargaining he had raised the issue that employees who had reached the last step (such as Mr. Dépault) should be awarded the newly created higher step automatically.

[15] For its part, the employer called as a witness Bob Derikozis, negotiator for the CFIA. Mr. Derikozis commented on Exhibit E-1 (*Memorandum of Settlement* and attached memo) as well as Exhibit E-2 (Document pertaining to the tentative agreement published by the PIPSC in May 2000).

[16] Mr. Derikozis stated he had never had the mandate of applying the new step adding to the AG-3s' scale retroactively or on a specific date. He maintained that even document E-2 prepared by the PIPSC referred to the retention of the anniversary date for pay increment on page 4: "Individual AG's maintain their current anniversary date."

[17] Referring to Exhibit E-3 (Summary of the Veterinary Medicine Group tentative agreement), Mr. Derikozis noted that in that specific case the parties had agreed that the increase added to the top of the salary scales would apply as of October 1, 1998. In his view, that was different from this case involving the agronomists. Mr. Derikozis further noted that, as indicated in Exhibit E-4 (Summary of terms of settlement in respect of the scientists (Scientific Regulation Group) and Exhibit E-5 (Summary of the memorandum of terms of settlement in respect of the Science and Administration Group), specific dates for moving to the newly-added step to the scale were established.

[18] In cross-examination the grievor asked the witness if this case involved a regular increase or rather a restructuring of scales and increments. Mr. Derikozis admitted there had been a restructuring of scales but maintained this had no effect on the date of promotion to the next step.

Arguments

[19] The grievor maintained that this case involved a restructuring of scales and that it was obvious that the parties wanted to rectify a situation. The agreement was intended not only to increase salaries but also to advance the agronomists within the scales by adding a level.

[20] In light of the circumstances, there did not seem to be a need to specify the increment date since a specific clause covers this. The first paragraph of Appendix A, *Pay Notes*, in fact provides as follows:

> *The pay increment period for employees, other than those paid in that part of the AG-1 scale of rates identified by ten dollar ($10) intermediate steps, is twelve (12) months and a pay increment shall be to the next rate in the scale of rates.*

[21] For its part, the employer maintained that the clauses have to be looked at in relation to one another and that, on the contrary, Appendix A in its *Pay Notes* provides the following in the third paragraph:

> *The pay increment date for an employee, appointed on or after August 13, 1982 to a position in the bargaining unit upon promotion, demotion or from outside the Public Service, shall be the anniversary date of such appointment. The anniversary date for an employee who was appointed to a position in the bargaing unit prior to August 13, 1982 remains unchanged.*

[22] According to the employer, the general text shows that the first paragraph of the notes referred to a principle, a 12-month requirement for an increment. The third paragraph referred to the date on which the increment applies, that is, the anniversary date.

[23] The employer believed the text was clear and the grievance was without merit. It made a request for costs if the grievance is dismissed.

Reasons for Decision

[24] It is obvious that the collective agreement which covers this grievance involves more than a simple salary increase. It also involves a restructuring of scales. In some cases, the circumstances of the negotiations can help the adjudicator interpret the wording of new provisions added by the parties. The fact remains nonetheless that the

adjudicator is ultimately bound by the wording of the collective agreement. In this case the grievor based his submission on wording that already exists.

[25] I will begin by analyzing the texts and tables relating to the restructuring of scales and then look at the terms and conditions of their application.

[26] As would appear from Appendix A of the collective agreement and Exhibit F-2 (annual rates of pay), the salary scale for AG-3s consisted of six steps. The first step was $51,272 and the sixth $60, 139.

[27] The grievor had reached the sixth level several years earlier. The new restructuring changes the sixth level as follows:

As of October 1, 1999	$62,000 (restructuring)*
As of October 1, 1999	$63,240 (increment)
As of October 1, 2000	$64,505 (increment)

[28] In addition, the parties had agreed to add a seventh (7th) step:

October 1, 1999	$63,873 (restructuring)
October 1, 1999	$65,114 (increment)
October 1, 2000	$66,416 (increment)

* Brackets added by the undersigned.

[29] As I understand it, Mr. Dépault was at the sixth (6th) level when the new collective agreement was signed (June 16, 2000). On that date his salary increased automatically to $63,240 retroactively to October 1, 1999, the date on which the sixth AG-3 level came into effect as amended.

[30] In terms of moving to the seventh step, the employer applied paragraph 3 of the *Pay Notes* attached to Appendix A (page 80) to determine that the increment date is the appointment anniversary date. For Mr. Dépault, that means January 5, 2000.

[31] Mr. Dépault claims he should have reached the seventh step on October 1, 1999 since he had been (had stayed) at the sixth (6th) step for over 12 months. I cannot accept that interpretation for the following reasons. The wording of the first paragraph of the *Pay Notes* in Appendix A (pages 79-80 of the collective agreement)

differs from that of paragraph three (3) and must have a different meaning. The first (1st) paragraph pertains to the increment period while paragraph three (3) pertains to the increment date. In the first case it is a matter of a length of time, whereas the third paragraph refers to a specific date (promotion date, demotion date or date of entry into the Public Service).

[32] In *Eveleigh* (166-2-13674) the adjudicator made a distinction between the period of time spent at a step and the increment date. In that case he was obliged to interpret a clause similar to that involved in the instant case. The collective agreement indicated that:

...

> *The pay increment period for a full-time employee is twelve months and the pay increment date is April 1. A pay increment shall be to the next higher rate in the scale of rates.*

...

[33] The adjudicator found that there was a distinction between the period of time spent at a step and the date on which the increase came into effect. He explained that distinction as follows:

...

> *In other words, where an employee in the group cannot be considered for a pay increment within a period shorter than the declared pay increment period of 12 months because either sub-paragraph (a) or (b) of paragraph 2 does not apply to him, he may well have to wait longer than 12 months before he can next be considered for a pay increment on the appropriate date, i.e., the next April 1 that occurs after the expiry of 12 months during which a particular pay increment has prevailed for the employee concerned.*

...

See also *Hermeon* (166-2-22869 and 166-2-22865)

[34] The employer applied the increment to January 5, 2000, Mr. Dépault's entry date (January 5). In fact, if the retroactivity date for applying the restructuring had been January 1, 1999, Mr. Dépault would have seen his salary readjusted to the new sixth level as of January 1, 1999 and would have advanced to the seventh step as of January 5, 1999, his anniversary date, since he had reached his increment period,

having stayed at the sixth level for twelve months (and more). In this case, that could not happen since the seventh level did not come into effect until October 1, 1999.

[35] In these circumstances I do not need to take into account the evidence with respect to the bargaining process. Each party seems to have been acting in good faith. The expectations of each party, or the meaning they would like to give to the changes that were made, cannot be considered by the adjudicator when the wording of the collective agreement can be interpreted clearly and has an effective scope.

[36] Aside from the testimony and the *Agreed Statement of Facts*, I note that the date of the level change in Mr. Dépault's case is January 5. This has apparently been the case for several years. There is nothing in the negotiated texts that explicitly states another date for a change of step. As established by the employer, the situation is different where other collective agreements are concerned, such as that of the scientists (Exhibit E-4) or the Science and Administration Group (Exhibit E-5).

[37] For the reasons given earlier, I cannot allow the grievance.

[38] The employer has also asked for costs. I conclude that the *Public Service Staff Relations Act* does not authorize the Board to grant costs and I fully support the opinion expressed to that effect in such decisions as the following:

> *Chong* (166-2-16249);
>
> *Public Service Alliance of Canada v. Treasury Board* (147-2-31, 169-2-447 and 161-2-448);
>
> *Lavigne* (166-2-16452 to 16454, 16623, 16624 and 16650);
>
> *McMorrow* (166-2-23967).

Jean-Pierre Tessier
Board Member

OTTAWA, September 24, 2001

PSSRB Translation