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**Public Service Staff
Relations Act**

**Before the Public Service
Staff Relations Board**

BETWEEN

**RON NORMAN MULLER
AND
TREVOR WILLIAMS**

Grievors

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer



Before: Joseph W. Potter, Vice-Chairperson

For the Grievors: Evan M. Heidinger, Professional Institute of the Public
Service of Canada

For the Employer: Renée Roy, Counsel

**Heard at Vancouver, B.C.,
January 17 and 18, 2002.**



DECISION

[1] Messrs. Ron Muller and Trevor Williams are both auditors with the Canada Customs and Revenue Agency (C.C.R.A.), classified as AU-03 and AU-02 respectively. Each has grieved the interpretation of clause 21.01 of their collective agreement in that they seek reimbursement for their annual membership dues which they paid to the Canadian Institute of Chartered Business Valuators (C.I.C.B.V.).

[2] Each grievance was filed on March 23, 2000, and applies to the membership dues they paid for the year 1999. The parties were in agreement that the decision in this case would also apply to the membership dues paid for the year 2000 as well.

[3] Quite simply, the grievors' position is that they have to belong to the C.I.C.B.V. as a result of their duties; therefore, they are entitled to reimbursement. The employer states that there has never been a requirement of membership imposed upon the auditors.

[4] Both parties agree that the issue refers to the proper interpretation to be applied to clause 21.01 of the Audit, Commerce and Purchasing Group collective agreement between the Treasury Board and the Professional Institute of the Public Service of Canada (Codes: 204/1999, 308/1999 and 311/1999; Expiry Date: June 21, 2000) (Exhibit G-1). The clause reads:

ARTICLE 21

REGISTRATION FEES

21.01 The Employer shall reimburse an employee for the employee's payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of the employee's position.

Background

[5] Mr. Williams testified that his duties include testifying in Tax Court as an expert witness in business valuation and assisting Department of Justice lawyers in critiquing opposing business valuation experts. This, he stated, was detailed in his work description (Exhibit G-3, page 2, under "Key Activities").

[6] Mr. Williams testified he would not be able to be recognized as an expert witness without belonging to the C.I.C.B.V. and being able to have the ensuing designation C.B.V. (Chartered Business Valuator) placed after his name.

[7] In order to obtain the C.B.V. designation, an individual has to successfully complete six courses, have a minimum of two years business valuation experience and pass a membership entrance examination. The entire program takes approximately three years to complete.

[8] It was not disputed that the C.C.R.A. paid for its employees to take the course, as well as for the cost of the books required. Employees also got the necessary time off to study for the exam, as well as reimbursement of the cost of the exam. The only item the C.C.R.A. did not pay for was the annual membership dues of \$508.25.

[9] When Mr. Williams was asked by his representative whether or not the C.C.R.A. required individuals to have the designation in order to be appointed to the position, he replied the C.C.R.A. did not, but individuals had to agree to take the course at some future date.

[10] Under cross-examination, Mr. Williams said he has never been asked to testify in court as an expert witness. He also agreed he could not have lost his job had he failed the courses offered by the C.I.C.B.V.

[11] Mr. Muller also successfully took the necessary courses to enable him to place the letters "C.B.V." after his name. He too believed that the court would not accept expert testimony from someone without the designation after his/her name. He recalled one incident where an employee of C.C.R.A. without the designation was not accepted as an expert witness.

[12] In cross-examination, Mr. Muller stated he has never had to testify in court as an expert witness.

[13] Mr. Dennis Turnbull is a Team Leader, Pacific Region, and is classified as an AU-04. He supervises six employees, including the grievors. He obtained his C.B.V. designation in 1991, as it was becoming clear to him that membership was becoming important. He has since testified 25 to 30 times in court as an expert witness. He testified that, without the designation, less weight would be accorded to the evidence supplied by the witness.

[14] In 1999, Mr. Turnbull informed the C.C.R.A. that he was no longer going to personally pay for his membership dues in the C.I.C.B.V. He further told the C.C.R.A. that, if they wished him to retain his C.B.V. designation, they could pay for his annual membership. After being told that the C.C.R.A. would not pay the cost of his annual membership, he let it lapse (see Exhibit G-7).

[15] In 2001, Mr. Turnbull was asked by a Department of Justice lawyer in Calgary to review a business valuation file that appeared to be headed to Tax Court. Mr. Turnbull agreed to this request, but told the individual he was no longer designated as a C.B.V. and there might be some difficulty having him qualified as an expert.

[16] The Department of Justice paid the necessary costs associated with having Mr. Turnbull resume his membership in the C.I.C.B.V. (Exhibit G-8).

Arguments

For the Grievors

[17] The issue of reimbursement for the payment of membership fees has been in front of adjudicators appointed under the *Public Service Staff Relations Act* (PSSRA) many times, and a body of jurisprudence has been built up. Some decisions have allowed reimbursement; others have not. What is clear is that each case must be decided on its own merits.

[18] The following case law was submitted: *Rosendaal et al.* (Board files 166-2-22291, 166-2-23143 and 23144); *Frigon et al.* (Board files 166-2-5002 to 5006); *The Queen v. Lefebvre et al.* [1980] 2 F.C. 199, 32 N.R. 613; *Kalancho* (Board file 166-2-14738); *Chorney and Booth* (Board files 166-2-14644 and 166-2-14656); *Bertrand and Krushelniski* (Board files 166-2-16666 and 16667); *Dagenais* (Board file 166-2-16517); *Barbas et al.* (Board files 166-2-18122 to 166-2-18176); *Miller* (Board file 166-2-12653); *Jolie, Rathwell and Woolfe et al.* (Board files 166-2-21409 and 21410 and 166-2-21432) and *Gajadharsingh and Others* (Board files 166-2-16812 to 16815 and 166-2-17674).

[19] Two principles emanate from these decisions:

1. Provincial law is not applicable to federal employees.
2. The grievors must show membership is a requirement of the job.

[20] In this case, both grievors are members of the C.I.C.B.V. and all costs related to becoming a member were for paid by the employer. The only cost not paid for is the annual membership dues.

[21] The employer may contend that once the designation of C.B.V. is obtained, there is no need to maintain it. This is not so. The work description requires employees to testify as expert witnesses and a designation is required.

[22] Mr. Turnbull chose to let his membership lapse; yet when it became apparent he might have to testify as an expert witness, the cost of reinstating his membership was paid for. These employees should not have to be put through that and their membership fees should be reimbursed.

For the Employer

[23] The grievors bear the onus in this case, and they have not met this requirement.

[24] The employer does not require employees to maintain a membership in the C.I.C.B.V. in order to perform the duties of their position. Nothing happens to the employees if they do not become members of the C.I.C.B.V., nor does anything happen if they let their membership lapse, as Mr. Turnbull did. Their jobs are not in jeopardy.

[25] Payment for the cost of the courses is to assist in developing knowledge and expertise, and the C.B.V. designation itself is of no concern to the employer.

[26] The crux of the grievors' case is that there is a possibility the court would not qualify someone as an expert witness without the designation. It may be that greater credibility would be lent to someone with a C.B.V. designation, but that does not render the designation a continuing requirement of employment.

[27] Counsel for the employer submitted the following cases: *Dagenais (supra)*; *Rosendaal v. Canada (Treasury Board)*, [1994] F.C.J. No. 725; *Miller (supra)*; *Bouthillette v. Canada (Treasury Board, Transport Canada)*, [1992] F.C.J. No. 416; Appeal No. A-574-91 and *Jolie, Rathwell and Woolfe et al. (supra)*.

Reasons for Decision

[28] The issue here is the interpretation of clause 21.01 of the appropriate collective agreement which is cited at the outset.

[29] As counsel for the employer has correctly stated, the grievors bear the burden of proving their case. In my view, they have failed to meet this burden.

[30] The collective agreement requires reimbursement of membership fees "... when the payment of such fees is a requirement for the continuation of the performance of the duties of the employee's position."

[31] We heard from Mr. Muller that employees do not need the membership in order to be appointed to the position, so there is no dispute that at the outset of employment this membership affiliation is not a requirement.

[32] The grievors testified that in order to be considered as expert witnesses in court, which is in their work description, they believe membership in the C.L.C.B.V. is required. However, both grievors admitted they have never had to testify in court; therefore, they had no direct knowledge on this issue. No testimony was called from a Department of Justice official to clarify this issue. Mr. Turnbull felt less weight would be accorded someone without the C.B.V. designation and this may be so. However, it does not mean that a designation is a requirement of continued employment.

[33] The only case cited by the grievors to buttress this point was a decision by the Tax Court of Canada in *342583 B.C. Ltd v. R* cited as *1999 Carswell Nat 892*, [1999] 3 C.T.C. 2279, 99 D.T.C. 1102 (Exhibit E-1) where, at paragraph 15, it states:

Respondent's counsel then presented one Frank Pollock ("Pollock") and attempted to qualify him as an expert witness. The Court did not accept him as such....

[34] The reasons why Mr. Pollock was not accepted as an expert witness are not fully explained; however, it does say he was unsuccessful in two attempts at writing the C.L.C.B.V. examination and it was also his first time testifying.

[35] The case is not, in my view, sufficient proof to show that membership in C.L.C.B.V. is a requirement of the grievors' positions. Indeed, the undisputed testimony of Mr. Turnbull is that he let his membership lapse because the employer would not pay the annual dues. Nothing untoward happened to him. His job was not in jeopardy because he let his membership lapse.

[36] A similar situation arose in *Rosendaal* (supra). At page 16, the adjudicator wrote:

...

The grievors attempted to show that it was their professional designation that gave them the credibility to testify as expert witnesses in cases involving complex accounting principles and that without it they would be less effective. The employer, on the other hand, believes that the person's knowledge and experience is what is important, not the external trappings of such knowledge and experience, i.e., the professional designation and the public perception of that person's knowledge and experience....

...

[37] The adjudicator goes on to say, at page 17:

...

The determination of these grievances, however, must be based on the requirements of the collective agreement. In that respect, the grievors have not demonstrated that the maintenance of their professional designation was a requirement for the continuation of the performance of the duties of their positions and, for that reason, the grievances must be denied.

...

[38] I find the same is true here. While membership may be beneficial in certain cases, it is not a requirement. Therefore, these grievances must be denied.

[39] Having found that, however, I suggest that it may be in the interest of all parties to enter into discussions with the Department of Justice to determine whether it is advisable to have some memberships maintained. It seems to me that, if large amounts of tax dollars are at stake, it may be beneficial to have some membership dues paid if it enhances the Federal Government's case at the Tax Court. That issue, however, is well outside my area of expertise and I leave it the parties to pursue it if they desire.

**Joseph W. Potter,
Vice-Chairperson**

OTTAWA, February 15, 2002.