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File: 166-2-31155

Citation: 2004 PSSRB 128



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JOANNE RICE

Grievor

and

TREASURY BOARD
(Department of National Defence)

Employer



EXPEDITED ADJUDICATION DECISION

Before: Guy Giguère, Deputy Chairperson

For the Grievor: Cécile La Bissonnière, Public Service Alliance of Canada

For the Employer: Kelli Traverse-Butler

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Ottawa, Ontario,
August 27, 2004.



REASONS FOR DECISION

[1] Joanne Rice, the grievor, was hired as a CR-03 term, Invoice Clerk, from January 21 to December 4, 1998, in the Base Comptroller Section, CFB Petawawa, Ontario. Ms. Rice was hired to replace one of two indeterminate incumbents in the CR-03 positions who were away attending a financial training program.

[2] At the time of Ms. Rice's hiring, the work descriptions for the indeterminate CR-03 positions were undergoing amendments to reflect new working conditions, particularly in administering an electronic payment system known as MILTON. On November 30, 1998, the revised work descriptions were reclassified as CR-04, retroactive to April 1, 1996.

[3] Ms. Rice is grieving the employer's failure to compensate her at the CR-04 group and level, which is the pay level of the incumbent she was replacing. At the first level of the grievance procedure, on April 21, 1999, it was confirmed that Ms. Rice performed additional duties outside the scope of the CR-03 work description. As well, in the instant hearing, I was informed that Ms. Rice had performed the full range of duties in the CR-04 work description except for the duties concerning the MILTON system, but neither had the incumbents performed these at the time.

[4] On May 10, 1999, Major Steele, Base Comptroller, sent Ms. Rice a revised work description identifying the duties assigned to her by her supervisor. On June 10, 1999, the revised work description was sent to the classification section for review, which confirmed that the duties were at the CR-03 group and level.

Reasons for Decision

[5] After reviewing the agreed statement of facts and the evidence presented at the hearing, I found that this grievance should be granted for the following reasons.

[6] Subclause 64.07(a) of the Program and Administrative Services Group collective agreement reads as follow:

- (a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least four (4) consecutive working days or shifts, the employee shall be paid acting pay*

calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.

[7] The long-standing jurisprudence of the Board on this issue (*Deley v. Treasury Board (Department of National Defence)*, PSSRB File No. 166-2-289 (1970); *Beauregard v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-2-26956 to 26958 (1996) (QL); *Beaulieu v. Treasury Board (Federal Court of Canada)*, 2000 PSSRB 76), is that an employee does not have to perform all the duties of the higher classification to get acting pay, as long as the employee performed the duties of the higher level of classification that were requested during that time.

[8] The issue is whether Ms. Rice performed the functions that would have had to be dealt with by the incumbent of the position had she not been absent. The incumbent, at the time, was not performing any duties related to the MILTON system. Ms. Rice performed all of the other duties of the CR-04 position. To receive acting pay, Ms. Rice did not have to perform, or be able to perform, every job function identified in the work description of the CR-04 position.

[9] Therefore, this grievance is granted. The grievor is to be compensated for the difference between the pay that she actually received for the period in question and the pay applicable to the CR-04 classification level.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, September 3, 2004.