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Files: 166-34-31210
166-34-31211
166-34-31212

Citation: 2003 PSSRB 5



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

THOMAS EDWARD BROWN, WALTER DONALD GALLANT
AND JOSEPH ALLISON KILBRIDE

Grievors

and

CANADA CUSTOMS AND REVENUE AGENCY

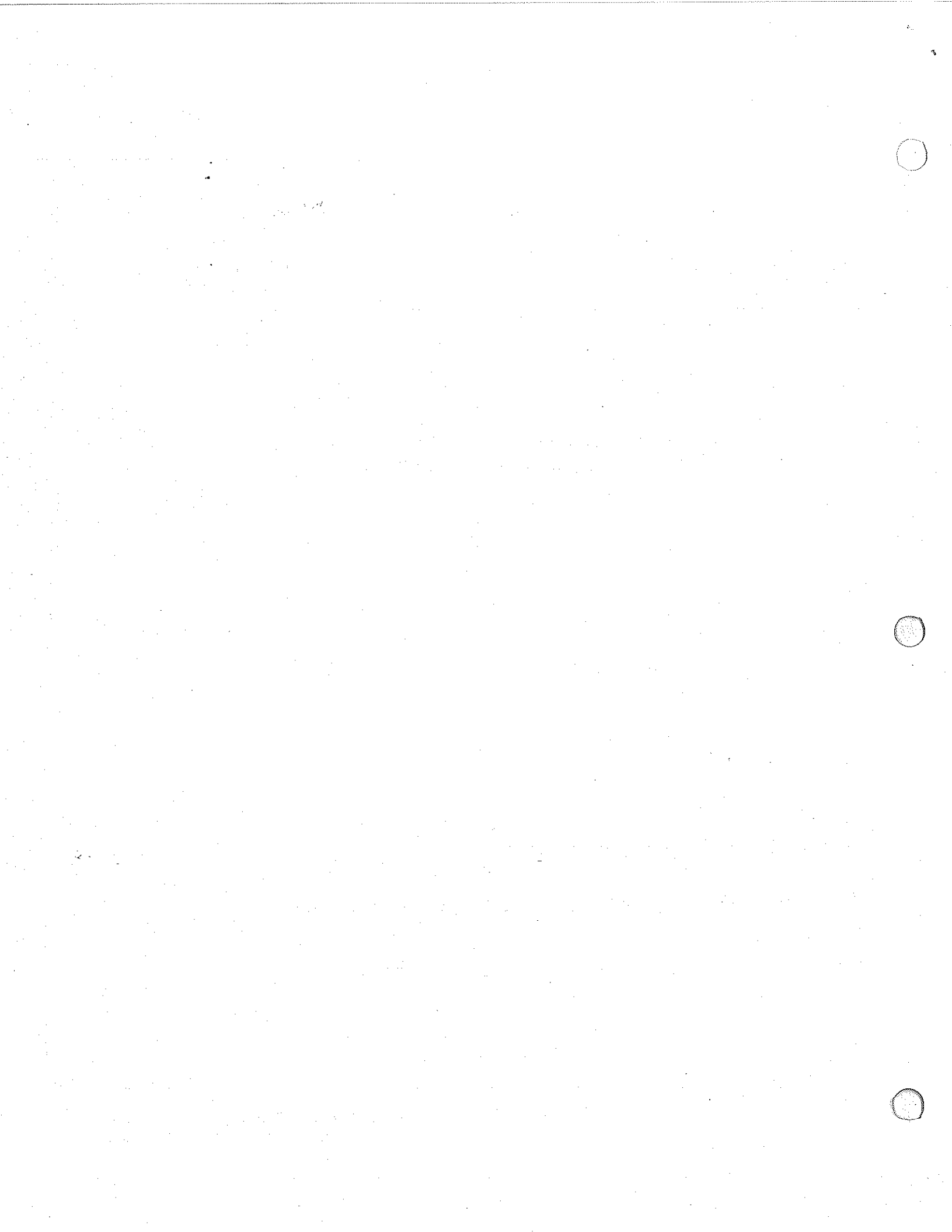
Employer

Before: Léo-Paul Guindon, Board Member

For the Grievor: Daniel Fisher, Public Service Alliance of Canada

For the Employer: Rosalie A. Armstrong, Counsel

Heard at Charlottetown, Prince Edward Island,
November 20 and 21, 2002.



DECISION

[1] The present case consists of three grievances filed against the Canada Customs and Revenue Agency (CCRA) by Thomas Edward Brown (Board file 166-34-31210), Walter Donald Gallant (Board file 166-34-31211) and Joseph Allison Kilbride (Board file 166-34-31212). The grievances were referred to adjudication by the Public Service Alliance of Canada (PSAC) on March 12, 2002.

[2] In each of the grievance presentations filed in October 1998, the grievors are complaining that their current position description does not accurately reflect their supervisory responsibilities and consequently they are requesting that the employer rewrite their position description. The grievors relied on Article M-32 ("Statement of Duties") of the Master Collective Agreement (Exhibit G-1), which states:

-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.

[3] Walter Gallant testified for the grievors.

[4] The three grievors have acted as store clerks (CR-03 group and level) at the Summerside Tax Centre since 1993.

[5] Fred Martin testified for the employer.

[6] He was the manager for the Finance and Administration Division (previously known as Finance, Administration and Returns Processing). The store clerks were directly under the supervision of Mr. Martin between 1993 and 2002. A mail processing supervisor function was added to the division chart in July 2002 and the store clerks have been reporting to that management level since that time (Exhibit E-7).

[7] In 1993, the store clerks were responsible for the distribution of office furniture and supplies and of the Goods and Services Tax forms in the Summerside centre. In 1995, the duties related to general income tax forms and guides were added to their responsibilities. Those additional tasks required more staff due to increased workload and were fulfilled by the appointment of cross-trainees and student workers in the store.

[8] The manager (Fred Martin or acting manager, Lorraine Stewart) sets objectives for the cross-trainees (Exhibit E-1 and E-2). The grievors provide on-the-job training by showing cross-trainees what to do, including control systems and procedures. The main goal of cross training is to enable them to perform all the tasks of a storeroom clerk. The grievors have to give guidance to the trainees in the execution of their functions and on security.

[9] The cross-trainees are classified at the same group and level (CR-03) as the grievors. Since 1995, they have been appointed to the store on a regular basis. On a rotating cycle of four to eight months, cross-trainees ensure additional workforce all year round to the store.

[10] In addition, for the summer period, student workers are hired for a period of four months in the Division. These resources are shared equally between the store and shipping/receiving. The manager establishes the expectations for the student workers who reported to Mr. Le Banquier from 1998 to 2002 and have been reporting to Miss Carmen Reeves since 2002.

[11] A modified statement of duties was completed by the employer and given to the employees around 1997 (Exhibit G-8). The following excerpt of the position description is related to the grievances.

Factor 2: Care and Responsibility

A) *Responsibility for the Work of Others*

The incumbent may be required to show job functions and work procedures to others and to provide advice.

B) *Responsibility for the Care of Individuals*

The work does not involve the provision of direct personal care to individuals.

[12] The grievors submit that since 1995, and more accurately since 1998, the position description has not described in an accurate way the responsibilities that they assume in relation with the new tasks of training and supervision of cross-trainees and student workers; of scheduling and of assignment of work; of performance evaluations of cross-trainees and student workers.

[13] The grievors submit Exhibits G-10, G-11, G-12 and G-17 showing, in their opinion, that the employer asked them to assume scheduling and assignment of work responsibilities. Speaking for the employer, Mr. Martin explained that he involves the workers in a consultation process and that he retains his management responsibilities regarding those elements. He retains all of his decision-making authority, even though he says to the grievors that "Guys, it is your ballgame. I don't want to intervene in the store." In her electronic message dated October 7, 1998 (Exhibit E-12), Lorraine Stewart (Acting Manager) agrees with the proposed schedule submitted by Thomas Brown on behalf of the store clerks. Lorraine Stewart fulfilled her responsibility about the scheduling even if she proceeded by consultation with the grievors before making a final decision. Management assigns student workers to the store for operational requirements (replacement of employees who are on holidays or away for different reasons).

[14] The performance evaluations for the student workers or the cross-trainees are another critical point related to job description. The grievors submit that they are responsible for evaluating performance, even though the employer sits with them to get their input and writes the final assessment. Management contends that the consultation process applied for performance evaluations does not constitute a delegation of authority to the grievors and the manager retains all his decision-making authority.

[15] A supervisor position for the purchasing section and the stores clerks was set up for a trial period in 1999 and 2000 (Exhibit E-6). The grievors acted in that position at the CR-04 group and level and they fulfilled supervisory duties when they signed, jointly with the manager of the division, the assessment of student workers. That experience was cancelled by management and a Mail Processing Supervisor position was added to the structure of the division in 2002 and was filled by Carmen Reeves (Exhibit E-7). Five sections report to Carmen Reeves including the store clerks.

[16] An objection to the filing of Exhibits E-3 and E-4 ("Assessment of Student Workers" Forms) was submitted by the grievors' counsel on the basis that it was impossible to cross-examine, in light of the fact that the employer had removed from the documents all personal information related to the individuals concerned. That objection is rejected because in my view, nothing in this case turns on that information. It is possible for the grievors to testify on all aspects of their involvement

in the assessment of student workers and for counsel for the grievors to cross-examine the employer's witness on the grievors' participation in that process. Information on specified individuals' performance adds nothing to the debate here and is not germane to the outcome of these grievances.

[17] The grievors submit that they write and sign letters of recommendation for the student workers. The management does not ask the grievors to do so but is aware of it.

[18] The manager, Fred Martin, states in his testimony that he or the acting manager, Lorraine Stewart, has the sole responsibility related to appoint people, to track sick leave and overtime and to carry out disciplinary measures. The employer contends that the grievors do not exercise supervisory responsibilities when they are involved in a consultation process for scheduling, assignment of work, setting of priorities for the store and staff performance assessments.

[19] The grievors explain that the modified statement of duties completed in 1997 did not reflect accurately their supervisory responsibilities and they submitted their complaint to the management at the time. The employer suggested that they wait for the universal classification system to be put in effect because this new system would correct the problem. After the Agency decided to apply the UCS, the store clerks filed grievances.

[20] The grievors submit that the shipper/receiver work description (group and level CR-04) describes in a more accurate way the new responsibilities that they assumed after 1995, in the following extract taken from Exhibit G-9:

FACTOR 2: CARE AND RESPONSIBILITY

A) Responsibility for the Work of Others

The Shipper/Receiver supervises the work of two Shipping/Receiving Helpers. Supervisory responsibilities include: conducting on-the-job training in material handling, safety practices, work methods and procedures; providing ongoing guidance and instruction to staff; scheduling hours of work; assigning work and setting priorities; ensuring quality control and adherence by staff to established regulations and procedures; evaluating staff performance; recommending training or disciplinary action; and developing the abilities of personnel through job rotation and

training. The incumbent makes recommendations on performance measurement criteria.

B) Responsibility for the Care of Individuals

The Shipper/Receiver ensures the safety of staff by overseeing the application of safety practices and procedures and the safe use of equipment in the loading dock area and Paper Stores. Also the safe operation of a motor vehicle.

[21] In answer to the objection of the employer's counsel relating to the admissibility in proof of Exhibit G-9, I accept this exhibit only as a suggestion from the grievors of a more accurate job description and not as proof of the tasks effectively performed by them.

Arguments

[22] Both parties accept the Public Service Staff Relations Board and adjudicator appointed pursuant to the *Public Service Staff Relations Act (PSSRA)* to deal with the statement of duties stated in Article M-32 of the Master Agreement. More specifically, the parties agree on the power of the board to interpret clause M-32 of the Master Agreement and to decide whether the job description provided to an employee is a complete and current statement of the duties and responsibilities of his position.

[23] For the grievors' counsel, this jurisdiction includes the evaluation of the qualification of the duties and responsibilities as "supervisory tasks". The employer's counsel submits that the qualification of duties as "supervisory tasks" is outside the jurisdiction of the Board.

[24] The grievors want the duties and responsibilities related to training of cross-trainees and student workers to be recognized by the employer and added to their job description. They also request the adjudicator to order the employer to provide a complete and current statement of the duties and responsibilities that they assume in relation with scheduling, assigning work, setting priorities and evaluating staff performance.

[25] For the employer, the statement of duties provided to the employees around 1997 (Exhibit G-8), and more specifically in the factor 2A) and B) extract stated at paragraph 11 of the present decision, includes all the duties and responsibilities performed by the grievors. Consequently, the adjudicator should deny the grievances.

Reasons for Decision

[26] After taking into consideration the proof and the exhibits, I have come to the conclusion that the position description as modified in 1997 did not accurately describe the tasks performed by the grievors at the time of their grievances.

[27] More specifically, the grievors convinced me that they effectively performed on-the-job training for cross-trainees and student workers on a steady and regular basis at the time of the grievances. The duties and responsibilities related to the on-the-job training are not occasional or minor and represent an important part of their tasks and have to be included in their job description.

[28] The grievors also convinced me that they are involved in the consultation process with regard to scheduling, assignment of work, setting priorities in the store, and evaluating the cross-trainees and student workers.

[29] The employer convinced me that the grievors do not hold delegated responsibilities on those matters, which remain the sole responsibility of the manager (or acting manager). I conclude that management does not delegate his authority for scheduling and assignment of work and for staff performance assessment when he proceeds to consultation with the store clerks on these matters.

[30] My jurisdiction, as agreed by the parties, gives me the power to decide if the job description provided to an employee is complete and accurate and shows the duties and responsibilities of his position. I consider that the grievors' duties and responsibilities, listed in paragraphs 27 and 28 of the present decision, cannot be considered "supervisory responsibilities". The grievors have not proved that when they assume those tasks, they are effectively in authority with respect to the cross-trainees or on student workers. On that aspect of "supervisory responsibilities", I have to accept the testimony of the employer on the fact that he never delegated any supervisory responsibilities to the grievors but agreed to proceed in consultation with them on some subjects (listed in paragraph 28 (*supra*)).

[31] Consequently, I allow in part the grievances filed by the grievors.

[32] To complete the work description, the employer should add a paragraph along the lines of the following to Factor 2: CARE AND RESPONSIBILITY at A) Responsibility for the Work of Others.

The responsibilities of store-room clerks include conducting on-the-job training in material handling, safety practices, work methods and procedures, including inventory systems to cross-trainees and student workers. The on-the-job training includes providing ongoing guidance to cross-trainees and student workers.

The store-room clerks make recommendations on scheduling, assignment of work, setting priorities and on performance assessment of cross-trainees and student workers.

[33] The employer must accordingly issue to the grievors a modified work description that includes wording similar to that set out in the above paragraphs.

**Léo-Paul Guindon,
Board Member**

OTTAWA, January 29, 2003.

