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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

DOMINICK MORIN

Grievor

and

TREASURY BOARD  
(Fisheries and Oceans Canada)

Employer



**Before:** Sylvie Matteau, Deputy Chairperson

**For the Grievor:** Francine Cabana, Public Service Alliance of Canada

**For the Employer:** Karl G Chems, Counsel

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Heard at Québec, Quebec,  
October 20, 2004.

## DECISION

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[1] This decision deals only with a preliminary objection by the grievor, Dominick Morin, regarding his status as an employee at the time of his termination. His grievance of August 20, 2001, objects to his dismissal on July 25, 2001 (Exhibit G-4), alleging that it was a disguised disciplinary measure and that the employer acted in bad faith. A complaint was also filed with the Canadian Human Rights Commission. On September 16, 2003, the Commission decided, pursuant to paragraph 41(1)(a) of the *Canadian Human Rights Act*, not to hear the complaint until the complainant had exhausted all other remedies available to him.

[2] The objection can be summarized as follows: this is not a case of rejection on probation. According to Mr. Morin, he was not on probation at the time he received the letter of rejection because the employer had indicated to him, in a letter dated July 29, 1999 (Exhibit G-2), that it was offering him an indeterminate seasonal position at the GT-01 level with immediate reclassification to GT-02. The letter stated that he would be [translation] "considered on probation for his entire employment until he had completed 12 months". Mr. Morin accepted this offer on August 2, 1999. Taking into account his seasonal employment and the fact that his employment began on March 15, 1999, he feels that his probation ended on June 13, 2000. He should therefore be reinstated and his grievance should be handled on the basis of his status as an indeterminate employee who had completed his probationary period.

[3] The employer argues that Mr. Morin was on probation at the time of his rejection and is subject to section 28 of the *Public Service Employment Act* (PSEA) because candidates are on probation for the entire period of their training, which does not end until the candidate is promoted to a fishery officer position at the GT-03 level in accordance with the designated program approved by the Public Service Commission (PSC). Moreover, the employer informed the grievor on June 7, 2000, of the error regarding the duration of this probation, which was included in the July 29, 1999 letter. Mr. Morin acknowledged receipt of the June 7, 2000 letter on June 20, 2000, and never contested it.

[4] This question was raised at the start of the hearing and the parties agreed to a mediation process to resolve the entire matter. Following the failure of those negotiations, the hearing proceeded on this preliminary question. Mr. Morin testified and the employer called Lucie Aubin, Acting Director, Human Resources, for the

Department since August 2004 and Head, Regional Operations, from July 2000 to August 2004.

The evidence

[5] Mr. Morin explained that, at the time of his rejection, he was a fishery officer at the GT-02 level, a seasonal job for nine months of the year. He was appointed for an indeterminate period on July 29, 1999 (Exhibit G-2). He began work on March 15, 1999 at the GT-01 level. The letter reclassifying him to the GT-02 level, as fishery officer, clearly mentioned, in his opinion, that his probation would terminate when he had completed 12 months of work from the time of his hiring. It was accepted that Mr. Morin's periods of work were as follows: March 15 to December 17, 1999; February 7 to April 20, 2000; and May 31 to December 20, 2000. A 12-month probationary period would therefore, in his view, be completed on June 13, 2000.

[6] When he received the letter correcting the error, dated June 7, 2000 (Exhibit G-3), he said that he was called to his supervisor's office where he read the letter and signed the acknowledgement of receipt. That was on June 20, 2000. Mr. Morin explained that when he was in his supervisor's office, he was quite fearful, believing that the purpose of the meeting was his dismissal. He said that he had to sign the acknowledgement of receipt under threat of being dismissed if he did not do so. He added that he signed and never contested the letter because, according to his calculations at the time, he was no longer on probation anyway and the letter was of no importance. Under cross-examination, he stated that he checked this issue with his union representative at the time, who allegedly confirmed that the letter of June 7, 2000, had no effect because the 12 months had already expired when he received it. He also confirmed that he never filed a complaint about the way that his supervisor allegedly threatened him or exercised undue pressure on him to make him sign the acknowledgement.

[7] He also confirmed that he was invited, as of June 4, 1998, to [translation] "participate in training related to the Fishery Officer Career Progression Program" (Exhibit E-2). He confirmed his interest in being part of the Program on June 5, 1998, and received an invitation to participate in the selection process on January 22, 1999 (Exhibit E-1). Mr. Morin claimed, however, that he did not have any information on the Fishery Officer Career Progression Program (FOCPP), that he did not know its terms

and conditions, and that he was never informed of them. In his opinion, it was a technical detail that was not applied.

[8] The employer submitted the official approval documents for the Program from the PSC, dated April 25, 1997 (Exhibit E-3), containing an appendix that included a description of the Program. The probationary period is described at page 7 as follows:

[Translation]

***Probationary period***

*Trainees who are recruited from outside the Public Service will be on probation for the entire duration of the Program (section 2 of PSER schedule).*

*Trainees recruited from within the Public Service will only be on probation if their probationary period in their previous employment has not been completed (section 3 of the PSER schedule)*

[9] Section 2 of the schedule of the Public Service Employment Regulations (PSER) reads as follows:

**SCHEDULE 2**  
**(Sections 32 and 33)**

Section	Class of Employees	Probationary Period
2.	Employees who are recruited into an apprenticeship or occupational training program	Duration of the apprenticeship or occupational training or twelve months, excluding any period of leave without pay or full-time language training and any period of leave with pay in excess of 30 consecutive days, whichever period is longer.

[10] The probationary period is also specified in the document entitled "Training and Development - General: Fishery Officer Career Progression Program" (Exhibit E-4). At page 14, article 4(a) and (c) read:

**4. Probationary period**

*(a) Trainees are on probation for the duration of their training. There are two training periods each consisting of twelve months. The Regional Review Committee will examine Trainee performance within the first*

*12 months. Probation will cease upon appointment to the full Fishery Officer working level;*

*[...]*

*(c) Trainees are promoted to GT-02 upon successful completion of the first year in the Program. The probationary period will continue for the remaining 12 months of the Program;*

*[...]*

[11] At the same time, that is, in June 2000, a remedial plan was being discussed to address Mr. Morin's weaknesses and to improve what he himself called his "nonchalance". He also stated that he had had very little supervision since his appointment to the GT-02 level. In his opinion, this confirmed that his probationary period was over.

[12] Ms. Aubin commented on and explained the progress and conditions of the Program in accordance with the documents submitted. She explained that the mistake made in the July 29, 1999 letter was discovered during a meeting with Mr. Morin's superiors to discuss his remedial plan. She had understood from reading Mr. Morin's file that he was no longer on probation but realized, during the discussion, that the managers considered Mr. Morin to be still on probation. She therefore followed up further and determined that the correspondence to candidates recruited to the Program referred to the former 12-month probationary period that existed prior to 1997. She confirmed that the probationary period since the approval of the current program by the PSC in 1997 did not end until the employee was appointed to the level of GT-03 fishery officer; it is this appointment that corresponds to the end of the probationary period. The standard letter, used by Human Resources, had not been revised. A letter correcting the error was immediately sent to all candidates. Only Mr. Morin was affected by the correction because he was the only one of his group who had not yet been promoted to the GT-03 level.

### Arguments

[13] Mr. Morin's representative argued that the question at issue is not to determine Mr. Morin's conditions of recruitment but rather his conditions of employment at the time of his rejection. The letter of July 29, 1999, clearly indicated a probationary period of 12 months.

[14] The calculation of days worked by Mr. Morin enabled her to conclude that Mr. Morin completed his 12-month probationary period on June 13, 2000. On June 20, 2000, when he received the letter correcting the error, his probationary period had already ended. The employer argues that it was an administrative error. However, it had two occasions on which to correct that error, specifically, on May 14, 1999 (Exhibit G-1), and on July 29, 1999 (Exhibit G-2). The employee was justified in relying on the information in this correspondence. The employer had the obligation to communicate any change in the probationary period before it ended. In addition, section 28 of the *PSEA* covering rejection on probation requires 30-days' notice, which would mean that, in this case, advance notice should have been given to him, at the latest, on May 12, 2000. He was informed of his rejection on July 25, 2001, more than a year later.

[15] This is not a mistake; it is negligence. Ms. Aubin's testimony confirmed that the employer did not take the situation seriously. Mr. Morin is asking that the employer be ordered to reinstate him, retroactive to July 25, 2001, with full wages and benefits, at the GT-02 level.

[16] For the employer's representative, the question at issue is whether Mr. Morin was on probation at the time of his rejection or whether the probationary period ended in June 2000. The evidence showed that Mr. Morin received an invitation to participate in the FOCPP in 1998. There is no ambiguity; he applied to the Program at that time. The Program is clearly defined and stipulates that the candidate will be on probation throughout his training, that is, until he reaches the GT-03 level. He was successful in the competition and received a letter of offer for a GT-01 position, which was reclassified to the GT-02 level.

[17] For the employer, the mention of a 12-month probationary period in the second appointment was an administrative error. It was discovered in the spring of 2000 during a meeting at which Ms. Aubin was asked to advise management about developing a remedial plan for Mr. Morin. The employer had no choice other than to issue a letter correcting the error and it sent that letter to all candidates in the group. Only Mr. Morin had not yet been promoted to the GT-03 level.

[18] The probationary period is set by legislation. This type of administrative error must be corrected as soon as it is discovered and cannot give anyone entitlement. According to the employer's representative, the conditions required to apply estoppel

do not exist in this case. On this point, Mr. Morin's representative agrees and noted that this was not what was being argued.

[19] The employer argued that Mr. Morin was aware that he had been hired under the FOCPP and that he should have known that his probationary period did not end until he was promoted, like his colleagues, to the GT-03 level. His testimony that he was not familiar with the Program, that he did the calculation and that he knew, in any event, that his probationary period ended in June 2000, is questionable. Moreover, his testimony to the effect that he was afraid that he was going to be dismissed at the meeting on June 20, 2000, confirms, in the view of the employer's representative, that Mr. Morin knew his job was vulnerable because of his probationary status. Furthermore, he never complained about the way that he was allegedly "forced" to sign this letter. He should have known that an employee could not be dismissed solely for refusing to sign an acknowledgement of receipt of a letter. According to the employer, Mr. Morin has rewritten history to use a technical point that would mean he was no longer on probation at the time that he received the letter correcting the error and later at the time of his rejection.

[20] The employer's representative submitted three decisions in support of his argument. They are *Didier Arnould v. Treasury Board (Fisheries and Oceans Canada)*, 2004 PSSRB 80, in which it is recognized that the probationary period for fishery officers ends with appointment to a GT-03 position, *Maccabée v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-2-19793 (1990) (QL) and *William A. Gibbon v. Her Majesty the Queen* (1977), 77 DTC, 5193 on the conditions applicable to estoppel. He asked that the finding on the preliminary question be that Mr. Morin was on probation for the duration of his training, that is, until his appointment to the GT-03 level, as stipulated in the Act and despite an administrative error that cannot give him entitlement.

### Decision

[21] I will begin by saying that I agree that there is no question of estoppel in this matter. The necessary elements are not present. This question was discussed by the Deputy Chairperson, Philip Chodos, in *Hicks v. Treasury Board (Human Resources Development Canada)*, PSSRB File No. 166-2-27435 (1997) (QL).

[22] Rather, the question is to determine whether the grievor can rely on a letter sent by the employer informing him, mistakenly, that he would be considered to be on probation for the entirety of his employment until the completion of 12 months, contrary to what is set out in the Act and the FOCPP approved by the PSC.

[23] The correspondence with Mr. Morin clearly indicates that he was hired under the FOCPP. This program provides that candidates hired from outside are on probation for the duration of their training or 12 months, "whichever period is longer" (section 2 of the PSER schedule). That training ends with appointment to the position of fishery officer, GT-03 level. It should be noted that the 12-month probationary period as a GT-02 fishery officer should be calculated from the appointment to that level, which is July 29, 1999, and not from the date of hiring as a GT-01 on March 15, 1999, in accordance with paragraph (c) of section 4 of the document entitled "Training and Development - General: E Fishery Officer Career Progression Program": "The probationary period will continue for the remaining 12 months of the Program..." Consequently, the probationary period at the GT-02 level was not complete on June 20, 2000.

[Underlining added]

[24] The wording of the letter dated July 29, 1999, and the fact that his superiors allegedly led him to believe that his probationary period ended in 12 months are not enough to give him entitlements. The decision in *Hicks (supra)* is along the same lines.

[25] A similar situation occurred in *Gagné v. Treasury Board (Department of Veterans Affairs)*, PSSRB File No. 166-2-15655 (1986)(QL). In that case, an error was also made in the letter of special assignment sent to the employee referring to "an indeterminate appointment" and informing him that he would not be subject to a probationary period. Adjudicator Jean Galipeault ruled in that case that the employee was still on probation at the time of his rejection because the probationary period was an integral part of the selection process and that employee was aware of that requirement.

[26] Given the evidence submitted, I find that Mr. Morin should have known that his probationary period would terminate with his appointment to the GT-03 position, as was the case for those in training with him. Moreover, the letter of July 29, 1999,