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Date: 20040803

File: 166-33-31789

Citation: 2004 PSSRB 102



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

JOHN ALFRED SPAWN

Grievor

and

PARKS CANADA AGENCY

Employer



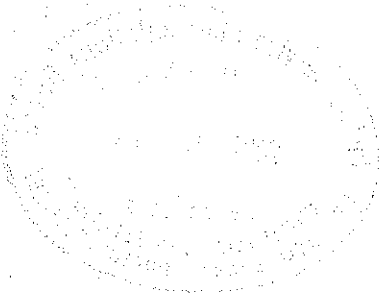
**Before:** Evelyne Henry, Board Member

**For the Grievor:** David Landry, Public Service Alliance of Canada

**For the Employer:** Richard E. Fader, Counsel

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Heard at Ottawa, Ontario,  
July 12, 2004.



## DECISION

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[1] On April 5, 2004, I rendered a decision (2004 PSSRB 25) in John Spawn's grievance against Parks Canada Agency's decision to demote him from his full-time Firefighter/Security Person position (GS-PRC-06) to a seasonal (40% of the time) Groundskeeper (GL-ELE-03) position.

[2] On April 27, 2004, the bargaining agent wrote to the Board advising that the parties had encountered difficulties in implementing my decision, stating:

[...]

*[...] the employer has implemented the award in defiance of the order to reinstate, and has offered another demotion - GLE-ELE-3 - by cobbling time from other seasonals in order to offer a previously non-existent position.*

[...]

[3] The bargaining agent also asked for a hearing, which was convened in Ottawa on July 12, 2004.

[4] Mr. Spawn testified that he received a letter on April 19, 2004 (Exhibit G-1), which reads as follows:

*As per the adjudication decision rendered on April 5, 2004, your seasonal GL ELE 03 Maintenance Groundskeeper position number 002557 at the Fortress of Louisbourg National Historic Site will be converted to a full-time, indeterminate position effective April 26, 2004.*

*This reinstatement is conditional on your following the programs and/or taking the medication prescribed by your medical practitioners. During the two years following reinstatement, we require that you provide periodic evidence of your fitness to work on a minimum of an annual basis.*

*If you have any questions on your reporting date of April 26, 2004, contact Tom Meagher at ...*

[5] Mr. Spawn stated he went to work after receipt of Exhibit G-1 and worked for one week and asked for and was granted a leave of absence for three months to pursue his employment in Halifax.

[6] During that week, he was told by his supervisor, Philip Burke, that he did not know what Mr. Spawn would be doing in the winter because there was barely enough work for the four of them. What Mr. Burke meant by the four of them was himself as

supervisor, Harry Kennedy, Heavy Equipment Operator, Stanley Pink, also a Heavy Equipment Operator, and Karl Bishop, full-time Maintenance Groundskeeper.

[7] Mr. Spawn was not given a job description and in talking with fellow term groundskeepers, learned that they were offered only 12 weeks as opposed to the 16 to 18 weeks they had been offered in previous years. He was told that only two of the three seasonal employees were offered these terms.

[8] Mr. Spawn testified to the salary and benefit differences between the ELE-03 position and his former Firefighter/Security Person position (GS-PRC-06). Mr. Spawn indicated that in his former position he could expect to earn an average of \$47,000 a year in salary, overtime and other premiums. In his ELE-03 position, there is no overtime or premiums paid and he is looking at an average of \$30,000 a year.

[9] Mr. Spawn also testified to the issue of restitution for the gas he took. The employer agreed to accept Mr. Spawn's calculations of \$500 as an appropriate amount for restitution. The grievor has already reimbursed \$281.25; therefore, there would remain a balance of \$218.75.

[10] Carol Whitfield, Field Unit Superintendent, testified and stated that the term seasonal employees have no guarantee of being offered work from year to year. Indeterminate seasonal employees are assured of the time attached to their seasonal position but there is no guarantee after that.

[11] The reduction in the employment of term seasonal employees is not related to Mr. Spawn's reinstatement. It is the consequence of the overall government freeze on salary and wages.

[12] Ms. Whitfield testified that the decision to give Mr. Spawn a permanent, full-time ELE-03 position was made when it was ascertained that there would be enough work for him year round. Otherwise, she would have returned him to his former position.

[13] It is Ms. Whitfield's understanding that position 4210-8596, Labourer Level 2 (Exhibit E-1), which is Mr. Spawn's position, entails work all year. There will be work at groundskeeping, at maintaining walkways, at snow clearing, garbage collection and refuse work, at loading and unloading construction material and moving it to other work areas along with carpenters and their helpers. The job description entails assisting tradespeople in repair and maintenance activities. There will be work in

maintaining cross-country ski trails in the winter. There will also be work in more extensive cleaning of buildings in the winter, work that cannot be done in the summer because of the visitors, like cleaning of rugs and furniture.

[14] The job description (Exhibit E-1) is a generic job description that applies to all Labourer Level 2 positions; it is not specific to the Fortress of Louisbourg. The duties management has in mind for Mr. Spawn can all be encompassed in that job description.

[15] In cross-examination, Ms. Whitfield stated that Mr. Burke, when speaking with Mr. Spawn, may not have been apprised of the projects she and Mr. Meagher had been discussing for the winter, such as moving on site material which is no longer required in order to create new storage space and other cleaning projects. Ms. Whitfield also mentioned that Mr. Bishop, the other full-time ELE-03, often complained of not having time for other aspects of his job because the snow-clearing duties took so much time.

[16] The bargaining agent went over several paragraphs of my decision and argued that paragraph 289 had not been complied with because Mr. Spawn had been demoted to a full-time position and not reinstated. Paragraph 289 reads as follows:

*I therefore order that Mr. Spawn be reinstated to a full-time, indeterminate position. The employer may choose to assign Mr. Spawn to a position other than that of Firefighter/Security Person but it must be indeterminate, full-time and in the same geographical area. If no such position is available, then Mr. Spawn is to be reinstated in his Firefighter/Security Person position within three weeks of the date of receipt of this decision.*

[17] The bargaining agent argued that to be reinstated meant to be returned to his or a like position at the same level or with similar privileges. A permanent demotion would be inconsistent with all the mitigation factors taken into consideration in the decision.

[18] The employer argued that paragraph 289 is clear that the order to reinstate to "a full-time position" meant that a demotion was justified but that a demotion to 40% of the time was too much. Keeping in mind the case of C.B. who was demoted to his substantive position of ELE-03, on a full-time basis, to offer Mr. Spawn a full-time ELE-03 position where he could be supervised, would be tempering justice with mercy.

Reasons

[19] It was on purpose that I did not state that the grievor should be reinstated to his position or one at the same level. From the evidence before me, it was not clear if there could be a position other than Firefighter/Security Person available on a full-time, indeterminate basis. Since I have no power to order the creation of a position for Mr. Spawn but felt that demotion to a part-time position was too severe, I left it to the employer to look at its organization and determine what full-time work existed for Mr. Spawn.

[20] This hearing may have been avoided had the employer put in writing the description of the position it was offering to Mr. Spawn. It would also have helped in the reinstatement if all the supervisors had met to be clear on what this position entailed and what to communicate to Mr. Spawn.

[21] Since the parties are in agreement on the issue of gas restitution, I order that the issue of reinstatement to the workforce be clarified and that a meeting take place with Ms. Whitfield and Messrs Hoad, Meagher, Burke and Spawn to elaborate on what Mr. Spawn's job description is. In addition to the generic job description of Labourer Level 2 (Exhibit E-1), he is to be given a clearer description of the duties that may be expected of him in the fall and winter.

[22] It will be open to Mr. Spawn to apprise his supervisors of his many talents and in time to convince them to promote him either to his former position, to the impending vacancy in an electrician position or to other vacancies.

[23] In appointing Mr. Spawn to an indeterminate full-time Labourer Level 2 position, the employer has fulfilled my order of reinstatement of Mr. Spawn to a full-time, indeterminate position.

**Evelyne Henry,  
Board Member**

OTTAWA, August 3, 2004.