Date: 20040805

File: 166-2-32637

Citation: 2004 PSSRB 108

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

MARYON GRANT

Grievor

and

TREASURY BOARD
(Agriculture and Agri-Food Canada)

Employer

Before: Léo-Paul Guindon, Board Member

For the Grievor: Chris Rootham, Counsel for the Association of Public Service Financial Administrators

For the Employer: Rosalie Armstrong, Counsel

Heard at Ottawa, Ontario,
February 11, 2004.

DECISION

[1] Maryon Grant grieves management's decision of February 18, 2003, regarding her rate of pay on promotion, which she feels is in violation of Article 55 of the collective agreement and the "Terms and Conditions of Employment Policy" (TCEP) (Exhibit G-4, tab B). Her grievance was filed against the employer on March 18, 2003, and was referred to adjudication before the Board on August 12, 2003. The grievor requested recalculation of her rate of pay and retroactive payment of all applicable differences in salary and benefits.

[2] The parties agreed on a statement of facts, which was filed under Exhibit G-4, and reads as follows:

> 1. *On August 19th, 2002, Maryon Grant ("the grievor") was appointed to an indeterminate CR-04 with Health Canada and was placed at the maximum level of the salary scale for that group, at $39,349.* (Exhibit G-2, Appendix "A")
>
> 2. *On September 23, 2002, the grievor was appointed to an indeterminate FI-01 position at Agriculture and Agri-Food Canada at a salary of $42,419.* (Exhibit G-4, Appendix "A") *This was the third step of nine in the FI-01 salary scale, the rate being: $38,828; $40,623; $42,419; $44,216; $46,009; $47,807; $49,603; $51,398; $53,400.*
>
> 3. *When appointed as an FI-01, the grievor's rate of pay was established in accordance with the Public Service Terms and Conditions of Employment Regulations.* (Exhibit G-4, Appendix "B"). *When applying Section 24 of these regulations, her FI-01 rate of pay was calculated to be $42,419, based on the rate of pay she was receiving as a CR-04, $39,349.* (Exhibit G-1, Appendix "A")
>
> 4. *The provisions of the FI collective agreement expired on November 6, 2001.*
>
> 5. *On November 1, 2002, the Collective Agreement for the Financial Management Group (FI) of employees was signed and the annual rates of pay were made effective as of November 7, 2001. The rates of pay are found at Row A: $39,915; $41,760; $43,607; $45,454; $47,297; $49,146; $50,992; $52,837; $54,895.* (Exhibit G-3, Appendix "A")
>
> 6. *As a result of the revision of pay rates, the grievor's FI-01 salary was adjusted to $43,607 retroactively to September 23, 2002, when she first began working as*

an FI-01. This was the third step of nine of the FI-01 salary scale.

7. *On January 7, 2003, the grievor was advised by letter that although a former CR-04, she had been appointed to a CR-05 position retroactively to August 19, 2002.* (Exhibit G-4, Appendix "C")

8. *As a result, the grievor was paid for the salary difference between a CR-04 and a CR-05 from August 19, 2002 to September 20, 2002, the working day immediately before her appointment to the FI-01 position at Agriculture and Agri-Food Canada. Her rate of pay at the CR-05 level was $40,935.* (Exhibit G-2, Appendix "A")

9. *The Employer recalculated the grievor's FI-01 salary based on the Appendix "A" of the Collective Agreement for the FI group of employees signed on November 1, 2002 and based on her CR-05 salary at Health Canada applying the "Rate of pay on promotion Rule", 24(1)(a) of the Public Service Terms and Conditions of Employment Regulations. As a result of the Employer's calculations, the grievor's salary remained at $43,607.*

[3] Pierrette Lemay, who is a pay policy analyst for the Treasury Board, explained to the Board how the employer proceeded in calculating the pay adjustments in the present file. The "Pay Administration Volume" covers various pay rate changes resulting from promotions, demotions, transfers or special situations. On promotion, the "Pay Administration Volume" specifies the following:

Promotion

On promotion, an employee is entitled to the rate of pay nearest the rate of pay received immediately before the appointment, that gives an increase in pay that is at least equal to the lowest pay increment for the new position, where the new position has more than one rate of pay. (Public Service Terms and Conditions of Employment Regulations PSTCE Regs. 24.1). (Exhibit E-2)

[4] The "Public Service Terms and Conditions of Employment Regulations" (PSTCE), read as follows:

Rate of pay on promotion

24.(1) The appointment of an employee described in Section 23 constitutes a promotion where the maximum rate of pay applicable to the position to which that person is appointed exceeds the maximum rate of pay applicable to the employee's substantive level immediately before that appointment by:

(a) an amount equal to at least the lowest pay increment for the position to which he or she is appointed, where that position has more than one rate of pay; or

(b) an amount equal to at least four per cent of the maximum rate of pay for the position held by the employee immediately prior to that appointment, where the position to which he or she is appointed has only one rate of pay.

24.(2) Subject to Sections 27 and 28, on promotion, the rate of pay shall be the rate of pay nearest that to which the employee was entitled in his or her substantive level immediately before the appointment that gives the employee an increase in pay as specified in subsection (1) above; or an amount equal to at least four per cent of the maximum rate of pay for the position to which he or she is appointed, where the salary for the position to which the appointment is made is governed by performance pay.

[5] The employer applied the principle specified by the Federal Court of Appeal in *Canada (Attorney General) v. Lajoie*, [1992] F.C.J. No. 1019, (1992) 149 N.R. 223. This principle will be explained in the argument section of the present decision.

[6] In her testimony, Ms. Lemay specified the calculation performed by the employer to determine the starting salary as an FI on September 23, 2002, as follows:

Step 1	
CR-04 salary (maximum level)	$39,349
FI-1 increment (Exhibit E-3, Appendix "A")	$ 1,793
Gives a total of	$41,142

Step 2

The rate of pay in the FI-01 pay range, which is nearest to but not less than the total of $41,142, is $42,419 at the third step of the FI expired rates from the "from" line. (Exhibit E-3, Appendix "A")

[7] The employer made the following calculation to see if the January 2003 reclassification from CR-04 to CR-05 would change the starting salary as an FI-01:

Step 1

CR-05 salary (after reclassification)	$40,935
FI increment (updated from "A" line (Exhibit G-3, Appendix "A")	$ 1,843
Gives a total of	$42,778

Step 2

The rate of pay in the FI-01 pay range, which is nearest to but not less than the total of $42,778, is $43,607 of the "A" line. (Exhibit G-3, Appendix "A")

[8] The selected rate of pay of $43,607 is the same rate of pay received by Ms. Grant since the readjustment of salary based on the new collective agreement for the Financial Management Group (FI) employees (effective as of November 7, 2001). This retroactive readjustment of salary performed after the conclusion of the new collective agreement on November 1, 2002, is explained in the agreed statement of facts (paragraph 6 of Exhibit G-4). Consequently, the reclassification from CR-04 to CR-05 would not change the starting salary as an FI-01.

[9] On November 7, 2002, Ms. Grant's salary under the FI rates of pay was increased by revision to $44,697. A statutory increment raised her salary to $46,590 on September 23, 2003. A revision of salary due on November 7, 2003, brought her salary to $47,662 (Exhibit E-3).

Arguments

For the Grievor

[10] Subsection 24(1)(a) of the TCEP (Exhibit G-4, tab B) specifies that Ms. Grant should receive an amount equal to at least the lowest pay increment for the position to which she is appointed. The *Lajoie* decision (*supra*) explained how to recalculate a rate of pay when retroactive adjustment applied to the new position. The recalculation of the rate of pay should be done on the basis of the new salary to apply retroactively to the step of the salary range given to the employee on the date of his/her promotion. In the present file, the employer should have calculated the increase in Ms. Grant's salary, raising her CR-05 salary and the increments applicable to the FS pay scale of the collective agreement in force on the date of her promotion.

[11] The decision rendered in *Buchmann and Canada Customs and Revenue Agency*, 2002 PSSRB 14, describes how to recalculate the rate of pay when a retroactive adjustment of salary should be applied to the formal position held by the employee before his or her promotion. When an employee is promoted during the retroactive period of a collective agreement covering the position the employee is moving from, the employee's salary in the new position must be recalculated based on the retroactive salary for the former group and level. This principle should also receive application on reclassification. In the present file, the recalculation should be based on the pay level of CR-05 instead of CR-04 to determine the initial FI pay scale Ms. Grant is entitled to.

[12] In the present case, the Board should apply both decisions, as was done in *Copeland v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2003 PSSRB 19. On the date of his promotion to an acting WP-05 position, Mr. Copeland was at the highest step (fifth) of the WP-04 level. After his promotion, a restructuring resulted from the new collective agreement and brought him to the new sixth step of the WP-04 level. The Board ordered the employer to pay Mr. Copeland the recalculated WP-05 salary on the basis of the new WP-04 salary step.

For the Employer

[13] The Board should determine if the employer applied clause 55.03 of the collective agreement (Exhibit G-3) and the PSTCE regulations properly. In the present file, the employer calculated properly on promotion and it adjusted the salary following the retroactive changes in the new collective agreement for the Financial Management group. Ms. Grant did not grieve the recalculation of her salary after the November 2002 retroactive readjustment of salary. She grieved only after the recalculation done by the employer on her reclassification of January 2003.

[14] The language of the collective agreement provides that retroactivity only applies when the collective agreement changes. Clause 55.03 reads as follows:

> ***55.03***
>
> *(a) The rates of pay set forth in Appendix "A" shall become effective on the dates specified therein*
>
> ...
>
> *(c) Where the rates of pay set forth in Appendix "A" have an effective date prior to the date of signing of this Agreement the following shall apply:*
>
> *(i) "retroactive period" for the purpose of subparagraphs (ii) to (v) means the period commencing on the effective date of the retroactive upward revision in rates of pay ending on the day this Agreement is signed or when an arbitral award is rendered therefore;*
>
> *(j) a retroactive upward revision in rates of pay shall apply to employees, former employees or in the case of death, the estates of former employees who were employees in this bargaining unit during the retroactive period.*

[15] On her promotion to the FI-01 position, her salary was calculated on her current rate of pay for her CR-04 position. The employer applied the new FI rate of pay in November 2002, in application of the new collective agreement. On her promotion in September 2002, the employer applied the TCEP (Exhibit G-4, Tab B) and the calculation set forth in section 24. Upon promotion, the rate of pay received immediately before the appointment should be taken into consideration to calculate

the salary on appointment and the regulation did not provide a recalculation for retroactive reclassification.

[16] In the present case, the employer has to apply the decision rendered in *Lajoie* (*supra*). The Federal Court of Appeal stated that retroactivity cannot apply in a case like the present one. The Court explains this principle as follows:

> [...]
>
> *First, I find it hard to read ss. 65 and 66 of the Regulations as allowing retroactive revision of all, the consequences of an appointment every time a collective agreement gives employees retroactive salary increases. In my opinion, s. 65 should be read as enabling both employer and employees to know at once whether a new appointment is a promotion (s. 65(1)), a demotion (s. 65(2)) or simply a transfer (s. 65(3)). It seems to me that any other conclusion would lead to utter confusion: an employer who believed he had disciplined an employee for incompetence by demoting him would realize two years later that as the result of retroactive pay he had actually given the employee a transfer or even a promotion; on the other hand, an employee who enthusiastically accepted what seemed to him to be a promotion would two years later, to his great disappointment, find it was actually a demotion.*

[17] In the decision rendered in *Buchmann* (*supra*), the employee was entitled to recalculation of his salary when he was promoted during a period of retroactivity. This case cannot receive application here because the retroactive reclassification (CR-04 to CR-05) is not related to the collective agreement applicable to the grievor (as an FI-01). The decision rendered in *Tyrrell v. Treasury Board (Department of Foreign Affairs and International Trade)*, 2003 PSSRB 11, cannot receive application in the present case, as Ms. Grant was not on an acting assignment.

[18] In the third edition of *Collective Agreement Arbitration in Canada* (Butterworths), it is stated that retroactivity should be specified in the collective agreement in order to receive application. The principle is written as follows:

> *UNLESS SPECIFICALLY STATED, PROVISIONS OF A COLLECTIVE AGREEMENT SHOULD NOT BE GIVEN RETROACTIVE EFFECT*
>
> *4.26. General canons of interpretation indicate that the terms of a collective agreement should not be given retroactive effect unless the provisions thereof expressly or*

> *necessarily involve such a construction. This rule is derived from general contractual law.*
>
> > *It is... a well known principle of law that a contract or agreement speaks as of the date of its execution unless the operation of the agreement is deferred to a specific date or time set forth in the agreement itself.*
>
> *Such backdated duration clauses are relatively common in collective agreements however and have been the subject of considerable jurisprudence.*

[19] The employer submitted that the rule specified in *Lajoie* (*supra*) was properly applied in Ms. Grant's file in 2002, in readjustment of her FI salary on retroactive pay adjustment. This decision cannot be applied in 2003 to the reclassification of her CR position, which occurred just prior to her appointment to the FI position. Consequently, the grievance should be denied.

Reply for the Grievor

[20] In reply, counsel for the grievor submitted that a reclassification put the grievor in a situation that was different from a change in the rates of pay in the CR collective agreement. The reclassification was not based on the collective agreement and in the case of Ms. Grant, her new appointment to the CR-05 level has an effective date of August 19, 2002. This effective date is prior to the September 23, 2002, appointment to the FI position and should be taken into consideration when calculating the rate of pay on promotion in application of the PSTCE Regulations.

Reasons for Decision

[21] The issue in the present grievance is to decide if the retroactive reclassification and appointment of Ms. Grant from a CR-04 to a CR-05 position with Health Canada, of which she was advised on January 7, 2003, should be taken into consideration in the calculation of her salary on her promotion to the FI-01 position with Agriculture and Agri-Food Canada on September 23, 2002.

[22] The employer notified Ms. Grant by letter dated January 7, 2003, that her CR-04 position was reclassified to a CR-05 (Exhibit G-4, tab C). That letter also specified that her appointment to the CR-05 level was retroactive to August 19, 2002. The "Pay Administration Volume" at Chapter 4 ("Pay Rate Change") (Exhibit E-2) provides:

> ***11 Reclassification/Conversion***
>
> ***11.1 General***
>
> *The rates of pay on reclassification or conversion are to be administered in accordance with the Regulations Respecting Pay on Reclassification or Conversion (Refer to Appendix D in the Authorities section).*
>
> ...
>
> ***11.2 Reclassification***
>
> *A reclassification is a change in the group and/or level of a position resulting from a review or audit.*
>
> ***11.2.1 Higher Level***
>
> *If a position is reclassified to a group and/or level having a higher maximum rate of pay, the rate of pay shall be determined by applying the promotion or transfer rules unless specified otherwise in the collective agreement or pay plan.*
>
> (Emphasis added)

[23] On promotion, it provides:

> ***2. Promotion***
>
> *On promotion, an employee is entitled to the rate of pay nearest the rate of pay received immediately before the appointment, that gives an increase in pay that is at least equal to the lowest pay increment for the new position, where the new position has more than one rate of pay.* (Public Service Terms and Conditions of Employment Regulations (PSTCE Regs. 24.1).

[24] The PSTCE Regulation 24.1 provides (Exhibit G-4, tab B):

> ***Rate of pay on promotion***
>
> *24.(1) The appointment of an employee described in Section 23 constitutes a promotion where the maximum rate of pay applicable to the position to which that person is appointed exceeds the maximum rate of pay applicable to the employee's substantive level immediately before that appointment by:*
>
> *(b) an amount equal to at least the lowest pay increment for the position to which he or she is appointed, where that position has more than one rate of pay; or*

> *(b) an amount equal to at least four per cent of the maximum rate of pay for the position held by the employee immediately prior to that appointment, where the position to which he or she is appointed has only one rate of pay.*
>
> *24.(2) Subject to Sections 27 and 28, on promotion, the rate of pay shall be the rate of pay nearest that to which the employee was entitled in his or her substantive level immediately before the appointment that gives the employee an increase in pay as specified in subsection (1) above; or an amount equal to at least four per cent of the maximum rate of pay for the position to which he or she is appointed, where the salary for the position to which the appointment is made is governed by performance pay.*

[25] The collective agreement that applies in the present file does not specify that the promotion transfer rules shall not be used to determine the rate of pay on reclassification. On that basis, reclassification rule 11.2.1 of the "Pay Administration Volume" should receive application, as should PSTCE Regulation 24.1. The employee is entitled to the rate of pay nearest the rate of pay she received immediately before the appointment that gives an increase in pay that is at least equal to the lowest pay increment for the new position.

[26] The evidence demonstrates that the reclassification rules increase the rate of pay of the grievor from $39,349 (as a CR-04) to $40,935 (as a CR-05) retroactively to August 19, 2002. The employer paid Ms. Grant a retroactive adjustment of her salary for the period prior to her appointment to the FI-01 position on September 23, 2002.

[27] Pierrette Lemay, who testified for the employer, specified that she performed the following calculations following Ms. Grant's reclassification (Exhibit E-1):

> ***2. Calculation to see if the January 2003 reclassification from CR-04 to CR-05 would change G's starting salary as an FI-01***
>
> *Step 1*
>
> | | | |
> |---|---|---|
> | | | ***Determining the increment*** |
> | *40 935* | *CR-05 Salary* (reclassified) | *On the "A" line of the pay rates of* |
> | | *FI Increment* (updated | *the FI agreement, determine which* |
> | *+ 1 843* | *new rates effective November 2001)* | *span of numbers gives the smallest* |
> | *$42 778* | | *increment* |

Step 2

- *Select rate of pay in FI pay range nearest to but not less than calculation made above.*
- *$42 778 is closest on FI "A" line to $43 607, so she remains at $43,607 effective Sept 23, 2002.*

[28] In Step 1 of her calculations, Ms. Lemay used the increments provided for in the new rates of pay specified in the collective agreement signed in November 2002. In step 2, she also took into consideration the new rate of pay for the FI-01 level of $43,607, which was specified in the November 2002 collective agreement. Ms. Lemay specified in her testimony that, in doing so, the employer considered that the rate of pay for a CR-05 position was $40,935, on the day immediately prior to the September 23, 2002 appointment to the FI-01 position. The calculation of Ms. Grant's salary in her new FI-01 position was based upon her CR-05 salary, as a result of the retroactive reclassification of her prior position.

[29] The *Lajoie* case (*supra*) held that a retroactive salary increase did not mean that all of the calculations to salary following appointment have to be reopened. It held that only payment aspects were reopened. In the case at hand, the situation is related to a retroactive reclassification, which is entirely another matter than in *Lajoie* (*supra*), which is related to the retroactive application of new rates of pay. The employer, in reclassifying Ms. Grant's CR position on a retroactive basis, has admitted that it initially wrongly classified the position. The employer is solely responsible for the classification of positions and in the event that it admits to having improperly classified such positions, it should correct its error "all the way through" and give full effect to the retroactivity of the reclassification. The *Bethell v. Treasury Board (National Defence)* (PSSRB File No. 166-2-22225) (1993) (QL), case dealt solely with retroactive remuneration calculations on promotion, as in *Lajoie* (*supra*), and cannot receive application in the present case, which is related to the different matter of retroactive reclassification.

[30] In the decision she rendered in *Buchmann* (*supra*), adjudicator F. Chad-Smith pointed out that in the *Lajoie* decision (*supra*), the retroactive change to salary is related only to the new (AU) position and not the initial (PM) position. As in the present file, the *Buchmann* decision (*supra*) is related to a retroactive pay raise related to the initial position and the principle specified in *Lajoie* (*supra*) cannot receive application. Adjudicator Chad-Smith's reasoning in basing the calculation of the salary

for the promotion on the retroactive salary of the position the employee is moving from is as follows:

> *Accordingly, the starting point for the grievor's salary review was his present salary level at the time his new appointment was offered and accepted. On September 9, 1999 the grievor was a PM-02 at the third salary level. The retroactive effect of the new collective agreement increased his pay from $41,949 to $42,788 in that position. He was offered a promotion to the AU position. Therefore the calculation of his salary level in that new position must be based upon his PM salary of $42,788 as a result of the retroactive adjustment pursuant to the new collective agreement. It is from that salary that his salary for the promotion to the AU position is to be calculated. In other words, where an employee is promoted during the retroactive period of a collective agreement covering the position the employee is moving from, the employee's salary in the new position must be recalculated based upon the retroactive salary.*
>
> [...]
>
> *The argument made by counsel for the employer that somehow the grievor is bound by the terms of the September 9, 1999 letter of appointment requires comment. Although the letter of appointment may contain specific terms of employment, including whether the appointment is a promotion, transfer or demotion, care must be taken in assessing its import. When it comes to issues of pay, generally speaking the provisions of the collective agreement will apply. That being so, where the letter does not address the issue of the nature of the appointment, the nature of the appointment can be inferred from the employer's adherence to a pay scheme pursuant to the collective agreement. The utilization of a specific pay level will demonstrate whether the appointment was a promotion, a transfer or a demotion. It is not then open to the employer at a subsequent point in time to diminish, or otherwise reduce, a benefit previously conferred upon an employee. Clearly a level of pay (as distinguished from actual pay) and a right to a retroactive pay increase are benefits contemplated by the operative collective agreement(s) before me.*
>
> [...]
>
> *In so concluding, this decision is consistent with the 1993 decision of then Vice-Chairperson Tenace in Bethell and Treasury Board (National Defence), which cited and relied upon the same passage of Hugessen, J.A. in the Lajoie decision that I have quoted above.*

[31] I agree with that conclusion and the same principle should apply to Ms. Grant's retroactive reclassification, which gave her a retroactive adjustment of salary previous to her appointment to the FI position. Therefore, the calculation of Ms. Grant's salary to the FI-01 position must be based upon her CR-05 salary of $40,935. The recalculation of the starting salary for the FI-01 position should be done on the basis that the employee is entitled to the rate of pay nearest the rate of pay received immediately before the appointment that gives an increase in pay that is at least equal to the lowest pay increment for the new position and that follows the regulations on promotion.

[32] The recalculation should be done on the date of promotion, i.e. September 23, 2002. On that date, the CR-05 salary was $40,935 and the FI collective agreement in force at that date is the one filed under Exhibit G-1 (expiry date November 6, 2001). To give full effect to the reclassification of Ms. Grant to the CR-05 level, we have to consider that, prior to her promotion, she was appointed to that level and was entitled to a salary of $40,935. In the calculation applied by the employer in Exhibit E-1, the employer took the salary of the CR-04 level to determine the starting FI-01 salary and in doing so, did not give retroactive application to the reclassification.

[33] Consequently, the recalculation of Ms. Grant's salary level as an FI-01 should be performed as follows:

Step 1	CR-05 salary	$40,935
	+ FI increment (taken from "B" line of Exhibit G-1)	$ 1,793
For a total of		$42,728

Step 2 The selected rate of pay in the FI pay range of the expired collective agreement (Exhibit G-1) nearest but not less than $42,728. is $44,216.

[34] Consequently, the starting salary for Ms. Grant in her FI-01 position on September 23, 2002, should be $44,216, instead of $42,419 by the employer's calculations.

[35] In the calculation performed by the employer (detailed in Exhibit E-1) to see if the reclassification from CR-04 to CR-05 would change Ms. Grant's starting salary as an FI-01, two mistakes took place. First, at step 1 of point 2, the employer added to the CR-05 salary of $40,935 the FI increment of $1,843, which was taken from the November 1, 2002, new collective agreement. The employer cannot rely on that new collective agreement because on September 23, 2002, it was not signed yet. The FI increment of $1,793 to consider is the one from the collective agreement in application on that date and which was signed on March 2, 2001. Consequently, the result of the calculation on the applicable figures at step 1 should be $40,935 + $1,793 = $42,728.

[36] Secondly, at step 2 of point 2, the employer selected the rate of pay (nearest but not less than the result of the addition in step 1) from the new collective agreement signed on November 1, 2002. In doing so, the employer referred to a rate of pay of $43,607, which was in effect only after Ms. Grant's appointment on September 23, 2002. The employer should refer to the collective agreement signed on March 2, 2001, to pick up the applicable rate of pay with the result that the grievor's salary should be $44,216 instead of $43,607.

[37] On September 23, 2002, Ms. Grant became a new member of the Financial Management bargaining unit and was entitled, from that date, to all benefits included in the collective agreement in force on that date (with an expiry date of November 6, 2001). A new collective agreement was signed between the Treasury Board and the Association of Public Service Financial Administrators (APSFA) on November 1, 2002, after Ms. Grant obtained her appointment as an FI-01.

[38] As a member of APSFA, Ms. Grant was entitled to the retroactive readjustment of her rate of pay, provided for in the new collective agreement. Her starting salary of $44,216 as an FI-01 has to be the pay level to consider in applying the retroactive increase to which she became entitled by virtue of the new collective agreement. In the new collective agreement, her rate of pay of $44,216 ("from line" of A, Exhibit G-3) increases to $45,454 retroactively to September 23, 2002 (her first day of appointment as an FI-01). On November 7, 2002, her salary increased again to $46,590 (from line "B" of Exhibit G-3) and once again to $47,662 on November 7, 2003 (from line "C" of Exhibit G-3).

[39] The decisions rendered in *Tyrrell (supra)* and *Copeland (supra)* are not relevant in the present file because the appointments of the grievors in those cases concerned acting appointments, which are related to paragraph 46 of the TCEP, which covers situations of acting pay. There are no acting pay circumstances in the facts applicable to Ms. Grant.

[40] For all these reasons, this grievance is allowed and the employer is ordered to pay the grievor the salary and benefits (the grievance requests "payment of all applicable differences in salary and benefits") owed to her since September 23, 2002, at the rates of pay stipulated above.

Léo-Paul Guindon,
Board Member.

OTTAWA, August 5, 2004