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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

JACQUES HEPPELL

Grievor

and

CANADA CUSTOMS AND REVENUE AGENCY

Employer



Before: Jean-Pierre Tessier, Board Member

For the Grievor: Lyne Morin and Martin Ranger, Professional Institute of the
Public Service of Canada

For the Employer: Carl Chemsî, Counsel

Heard at Ottawa, Ontario,
November 20, 2003.

DECISION

[1] Jacques Heppell is employed with the Canada Customs and Revenue Agency (the Agency) in a team leader position in the Investigations Directorate. This position, classified at the AU-3 group and level, was reclassified to the MG-AFS-5 group, subgroup and level on March 31, 2002, when the Agency went through restructuring.

[2] On December 16, 2002, Mr. Heppell filed a grievance asking for acting pay for the period from October 14, 2001 to March 31, 2002, since the duties of his position had been those of an MG-5 group and level position since October 2001.

[3] The grievance was sent to adjudication on June 11, 2003, and the hearing was held on November 20, 2003.

The facts

[4] In its reply to the grievance and during the hearing, the employer argued that the grievance adjudicator had no jurisdiction over a classification matter. Furthermore, if the issue involved acting pay, the grievance was untimely.

[5] In his testimony, Mr. Heppell said he had received, in the fall of 2002, a performance appraisal for the period from September 4, 2001, to March 31, 2002 (Exhibit F-3). Subsequently, he was given a performance bonus for the period from April 1, 2001, to March 31, 2002. The bonus related to the MG group ("management/gestion") classification. An explanatory memorandum, dated October 2002 (Exhibit F-5), stated that the grievor had held an MG position for a period of seven months. Mr. Heppell explained that he had not previously received a performance bonus, because it did not exist when his position was classified in the AU group.

[6] Since he had received a performance bonus related to the MG group in the fall of 2002 covering the period from April 2001 to March 31, 2002, he concluded that in 2001-2002 he had held a position related to the MG group.

[7] Mr. Heppell filed a grievance after that for acting pay at the MG-5 group and level. He criticized the employer for not making the pay for the MG position effective until March 31, 2002, even though the position description had been known previously.

[8] Vince Renda holds a management position in the Agency and participated in the position restructuring process. He explained that there was no standard for the MG group classification and that the Agency, after 1999, established its own classification.

[9] In September 2001, a document was prepared for the employees who would be affected by the creation of the MG group ("early notice to employees in the Management Group" - Exhibit E-1). In October 2001, the Agency identified the positions that could be affected by the restructuring, including the MG group. The Public Service Staff Relations Board decision concerning the new bargaining units at the Agency was not received until December 2001 (2001 PSSRB 127) (Exhibit E-6).

[10] Subsequently, on June 13, 2002, the Agency and the bargaining unit reached an agreement on rates of pay (Exhibit E-8). The agreement provided, *inter alia*, for the rates of pay for the MG group and specified that they applied retroactively to March 31, 2002. Mr. Renda explained that the March 31, 2002 date was chosen so that the performance bonuses that would be granted could be calculated. These bonuses, for the current year, April 1 to March 31, were based on the pay rate as at March 31. The effect of this was to increase the bonuses given for the period from April 1, 2001, to March 31, 2002.

[11] Peter Cenne is the Agency's negotiator. He confirmed Mr. Renda's statements about the performance bonus. Clause 45.02 of the collective agreement (Exhibit F-1) explicitly provides that the performance bonus is calculated based on the salary as of the last day of the annual appraisal period.

[12] Although pay rates for the MG group were not determined in 2001-2002, the people who held positions in this group were identified and the measuring instruments relating to the performance bonuses were known. Therefore, such a bonus could be paid for the period from April 1, 2001, to March 31, 2002.

Argument

[13] The grievor said that, for the 2001-2002 year, he received the performance bonus applicable to the MG group.

[14] The evidence adduced by the employer does not contradict the grievor's claim that he performed the duties of an MG position during the 2001-2002 period.

