

Date: 20041216

File: 166-02-34133

Citation: 2004 PSSRB 175



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MARIE-CLAUDE DUVAL

Grievor

and

TREASURY BOARD
(Statistics Canada)

Employer

EXPEDITED ADJUDICATION DECISION

Before: Yvon Tarte, Chairperson

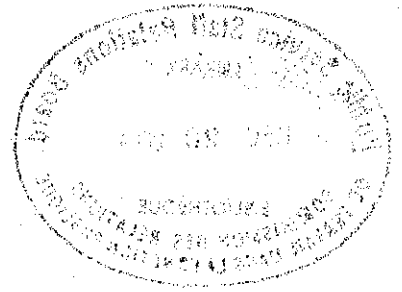
For the Grievor: Jon Peirce, PIPSC

For the Employer: Jeff Laviolette, Counsel

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Edmonton, Alberta,
November 24, 2004.





REASONS FOR DECISION

[1] This decision is concerned with the interpretation of the pay increment provisions of the Research Group Collective Agreement, as they relate to part-time mathematicians.

[2] The parties to this expedited adjudication process filed the following Agreed Statement of Facts at the hearing:

1. *At the time she filed her grievance, the grievor was classified at the MA-05 Group and level.*
2. *Pay Note 2 for the MA Group (copy attached), part of the Research Group Collective Agreement, specifies that the pay increment period for Mathematicians is twelve (12) months, except for those at the MA-1 level for whom the pay increment period is six (6) months. There is no specific clause that addresses the pay increment period for part-time employees, as there is for other Groups covered by this Collective Agreement (see attached copies Pay Note 3 for the HR and SE Groups).*
3. *Article 40 (Part-time Employees) of the Collective Agreement, Clause 40.02 states that part-time employees shall be entitled to the benefits provided under this Collective Agreement in the same proportion as their normal scheduled weekly hours of work compare with the normal weekly hours of work of full-time employees unless otherwise specified in the Agreement.*
4. *The practice at Statistics Canada, until late 2003, was to pro-rate pay increments for part-time Mathematicians. Prior to December 2003, this practice had not been challenged by the Bargaining Agent.*
5. *The Research Group Collective Agreement expired on 30 September 2003.*
6. *In December 2003, Statistics Canada's Compensation Unit agreed to move part-time Mathematicians to a twelve (12) month pay increment period. Consequently, part-time Mathematicians received a pay adjustment to compensate them for not having been on the twelve (12) month increment period between December 2001 and December 2003.*
7. *Following a January 27th, 2004, meeting attended by representatives of PIPSC, Statistics Canada and Treasury Board, Statistics Canada decided that this change to past practice was ill conceived and that the pay adjustments*

that had been paid in December 2003 would have to be recovered.

8. In February 2004, fifteen (15) part-time Mathematicians grieved the impending recovery of the pay adjustments. Ms. Duval filed her grievance on February 4, 2004 (copy attached). Through an agreement between PIPSC and Statistics Canada, the grievances were transmitted directly to the final level. The grievances were denied on March 10, 2004.
9. The pay adjustments received by the grievor are as follows:

Cheque dated 3/12/2003	\$1,330.43
Included on her bi-weekly salary dated 17/12/2003	81.46
Included on her bi-weekly salary dated 31/12/2003	81.46
Included on her bi-weekly salary dated 14/01/2004	<u>81.46</u>
Total amount	\$1,574.81

10. Ms. Duval received a memorandum (copy attached), dated February 12, 2004, advising her that the recent changes to her salary due to the recalculation of the increment should not have been completed and have resulted in salary overpayments. She was also provided with detailed calculation of the salary overpayment and options for repayment (copy attached).
11. Given that the fifteen (15) grievances were identical, the parties agreed that only one of the grievances would be referred to adjudication and that the decision of the Adjudicator would be applicable to all of the grievors.

[3] The question to be determined in this case is whether the word "benefit", as it is used in clause 40.02 of the collective agreement, refers to and includes pay-related matters. I believe it does not.

[4] Clause 40.02 of the collective agreement applies to all part-time employees regardless of the sub-group they belong to. It states that all benefits under the agreement will be provided to part-time employees on a pro-rated basis, in the same proportion as their normal scheduled weekly hours of work compare to the hours of work of full-time employees.

[5] The collective agreement, however, specifically deals with the pay increment period for the HR and SE sub-groups, whereas it does not for the mathematicians.

[6] This is a clear indication that "pay increment" is not a "benefit" referred to in clause 40.02 of the collective agreement. Otherwise, the pay increment clauses for HR's and SE's would be redundant.

[7] Given the clear language of pay note 2 of the collective agreement and the absence of restrictions, the pay increment period for all mathematicians, whether part-time or full-time, is 12 months.

[8] The grievance of Marie-Claude Duval is therefore allowed.

**Yvon Tarte,
Chairperson**

OTTAWA, December 16, 2004.

