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Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

MARCO PORLIER

Grievor

and

TREASURY BOARD
(Department of Natural Resources)

Employer

Indexed as
Porlier v. Treasury Board (Department of Natural Resources)

In the matter of an individual grievance referred to adjudication

Before: Marie-Claire Perrault, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: James Cameron, counsel

For the Employer: Adam Gilani, counsel

Heard at Ottawa, Ontario,
July 3, 2018.
(FSPLREB Translation)

I. Individual grievance referred to adjudication

[1] On June 3, 2014, Marco Porlier ("the grievor") filed a grievance to contest his pay level (file no. 566-02-10923). The Department of Natural Resources ("the Department"), where he works, denied it. Additionally, at every level of the grievance procedure and again when it was referred to adjudication, the Department objected on the grounds that it had been filed late. For his part, the grievor argues that it was filed in the applicable time and otherwise asks the Board to extend that time (file no. 568-02-352).

[2] At a pre-hearing conference, the parties asked permission to proceed in reverse of the usual procedure. They asked me to first decide on the merits of the grievance before second addressing the objection to its timeliness (and the application for an extension of time, if necessary) and third addressing any remedy appropriate in the circumstances. According to them, the hearing on the merits of the grievance would be brief, while the hearing on the objection would be much longer, in particular because of the volume of medical evidence that they intend to file with respect to the time for filing the grievance. I will borrow the words of the Honourable Judge Stratas in *Exeter v. Canada (Attorney General)*, 2014 FCA 119 at para. 7, to emphasize that "[o]ut of generosity … and in the heat of the moment …", I accepted the procedure that the parties jointly proposed to me. Just as the Honourable Judge Stratas states in *Exeter*, "[i]n fact, this is not what [I] should have done."

[3] The fair, credible, and efficient resolution of problems involving conditions of employment and the maintenance of harmonious labour relations have nothing to gain from decisions that the Board may make on the merits of grievances, if the decisions later become void because the grievances at issue were not filed within the prescribed time. When a party seeks to have a proceeding dismissed because it is out of time, or when the other party seeks an extension of time to initiate that same proceeding, it is more appropriate to address the timeliness issue first. In addition, making many interim decisions for a hearing is inconsistent with the objective of the prudent management of public resources.

[4] That said, and since I already accepted the parties' joint application to first deal with the merits of the grievance, this decision deals only with that issue.

[5] For the reasons that follow, my opinion is that the grievance is founded. The hearing will resume to address the timeliness of the filing in this case and the

application for an extension of time, if necessary.

[6] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board ("the Board") to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) before November 1, 2014, is to be taken up and continued under and in conformity with the *Public Service Labour Relations Act* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[7] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the Board's name and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board, the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

[8] In this decision, for ease of reading and depending on the context, "employer" refers to either the Treasury Board, which is grievor's legal employer, or the Department, to which the employer's powers are delegated.

II. Summary of the evidence

[9] All the documents in evidence were filed on consent. The facts are not disputed. The grievor testified on his own behalf. The employer called Anne-Marie Gérin to testify; she was his supervisor until 2011.

[10] The grievor is a teacher of French as a second language at the Department. He was hired in 2005 and was appointed for an indeterminate period in 2008. He is part of the Education and Library Science Group bargaining unit, which is represented by the Public Service Alliance of Canada (PSAC). The parties filed the relevant excerpts

from the collective agreements entered into by the Treasury Board and PSAC for the bargaining unit since November 19, 2001. The wording at issue has essentially not changed. The changes made to the collective agreement dated March 1, 2011, which applies in this case ("the collective agreement"), do not affect the grievance.

[11] A teacher's salary is determined based on two elements, years of experience and education level. The salary grids appear in Annex A2 of the collective agreement, which also includes "ED-LAT Sub-Group Pay Notes". The ED-LAT sub-group, in which the grievor's position is classified, is the group responsible for language teaching.

[12] The grievor's salary was established to correspond to eight years of experience and Education Level 3. He does not dispute the assessment of his experience. However, he disputes the fact that he is paid at the Education Level 3 rate, when he believes that he is entitled to the Education Level 4 rate. Paragraph 4 of the pay notes in Annex A2 of the collective agreement reads as follows:

> *4. **Education Levels***
> *For foreign-acquired degrees, the employee's level of education must be certified by an organization recognized by the Employer.*
>
> *Education Level 1 (B.A.)*
>
> *This level requires a Bachelor's or equivalent degree recognized by a Canadian university.*
>
> *Education Level 2 (B.A. + 1)*
>
> *a. This level requires an Honour's Bachelor's or equivalent degree recognized by a Canadian university.*
>
> *or*
>
> *b. A Bachelor's or equivalent degree recognized by a Canadian university plus one (1) further year of teacher education as defined in Note 6.*
>
> *Education Level 3 (B.A. + 2)*
>
> *a. This level requires an Honour's Bachelor's or equivalent degree recognized by a Canadian university, plus one (1) further year of teacher education as defined in Note 6.*
>
> *or*

> *b. A Bachelor's or equivalent degree recognized by a Canadian university plus two (2) further years of teacher education as defined in Note 6.*
>
> *Education Level 4 (B.A. + 3)*
>
> *a. This level requires an Honour's Bachelor's or equivalent degree, recognized by a Canadian university plus two (2) further years of teacher education as defined in Note 6.*
>
> *b. A Bachelor's or equivalent degree recognized by a Canadian university plus three (3) further years of teacher education as defined in Note 6.*
>
> [*Sic* throughout]

[13] Paragraph 4 refers to Note 6 for the following definition of "Teacher Education":

> *6.* ***Miscellaneous***
>
> *Teacher Education, for the purposes of this pay plan, means education certified by an employer-recognized organization and shall consist of any one or combination of the following:*
>
> *a. A year of study resulting in a recognized teaching certificate or diploma.*
>
> **
>
> *b. A year of university study, completion of which is officially certified by an educational establishment.*
>
> [The note was changed on March 1, 2011; before then, the areas of study were listed, and the grievor's area of study was recognized.]

[14] The level 4 claimed by the grievor requires three additional years of study after a bachelor's degree. After obtaining a first bachelor's degree in psychology, in December 1993, he continued his studies. He obtained a second bachelor's degree, in education, in November 1995, which is a three-year program, but he was able to complete it in less time by taking some steps. He explained that he had to finish in 1995 because it was his last year of eligibility under the university loan and bursaries system.

[15] At the Université du Québec, where the grievor studied, a full-time university year corresponds to 30 credits, namely, five 3-credit courses for each of the fall (from

September to December) and winter (from January to April) semesters. Therefore, it takes 3 years of full-time studies to finish a 90-credit bachelor's degree. During the winter 1993 semester, while finishing his bachelor's degree in psychology, the grievor completed an additional 3-credit course, which was recognized for his next bachelor's degree, in education. He also completed a course during the summer 1993 semester. During 3 of the 4 following semesters, he took an additional 3-credit course, in addition to the usual 15-credit course load. Finally, five 3-credit courses, taken in the context of the bachelor's degree in psychology, were credited to him for his bachelor's degree in education.

[16] In her testimony, Ms. Gérin emphasized that the employer considered the years devoted to study as being the measure of the additional years. The fact that a degree was awarded for a three-year program did not change the fact that the grievor pursued his studies for only two years after his bachelor's degree in psychology. Therefore, he should be paid at Education Level 3.

[17] The official certification of the second bachelor's degree, obtained in November 1995, is a transcript that bears the following statement: "[Translation] Credits completed: 90". The certification confirms that the grievor holds a bachelor's degree in education.

III. The parties' arguments

A. For the grievor

[18] According to the grievor, the collective agreement must be interpreted with at least a minimum of common sense. The intention of the employer and of the PSAC cannot be to penalize an employee for working harder than someone else would have and for achieving in two years what would have taken someone else three or even four years to achieve.

[19] It is clear that the grievor's second bachelor's degree was conferred after a program that usually takes three years to complete. The employer's interpretation is strange, in that a student who takes longer, because of laziness for example, would be rewarded, while one who takes less time would be punished.

[20] The underlying intention of the employer and the PSAC is to recognize additional education, not diligence or laziness. The grievor's additional education

corresponds to three years of studies, and therefore, he is entitled to recognition for Education Level 4.

B. For the employer

[21] The employer argues that it correctly applied the collective agreement's provisions. The "years of teacher education" correspond to calendar years, regardless of the university credits accumulated. The bargaining agent failed to prove that the collective agreement was violated.

[22] The provision at issue provides for remuneration for years of study; obtaining a degree has no effect on the calculation. A "year of university study" should be interpreted to mean exactly a year of study.

[23] The employer agreed that the expression "year of university study" is not defined in the collective agreement. It referred me to other examples in the collective agreement in which school year and fiscal year are referred to in other contexts, which I will return to in my reasons.

[24] The intention of the employer and the PSAC is clear — to recognize years of study. Since the early 2000s, the wording has stayed essentially the same. This means that the parties agree on the meaning of the provisions and that they have not been questioned.

C. The grievor's reply

[25] Three comments are to be made.

[26] First, when it comes to the ordinary meaning of the words, they must be interpreted based on their usual meaning. A calendar year is not the same as a school year, which begins in September and ends at the end of June; similarly, the university year also has another term, from September to April.

[27] Second, the employer's interpretation of a year of university study leads to an absurd result. A hard-working student who shows initiative is punished, and a lazy student who completes two years of studies without accumulating the expected credits is rewarded.

[28] Finally, the only logical way to count the years of university study is to ascertain

the result. Since the grievor completed a three-year program, he should be given credit for three years of study.

IV. Reasons

[29] The employer referred me to jurisprudence, the principles of which I accept, in particular the following.

[30] The grievor has the burden of showing that the employer interpreted the collective agreement unreasonably (*Vaughan v. Canadian Food Inspection Agency*, 2010 PSLRB 74 at para. 49). The Board cannot amend the collective agreement by its decision (*Chafe et al. v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 50; *Professional Institute of the Public Service of Canada v. National Research Council of Canada*, 2013 PSLRB 88 at para. 60; and *Arsenault et al. v. Parks Canada Agency*, 2008 PSLRB 17 at para. 38). When interpreting a collective agreement provision, not only the usual meaning of the words but also the collective agreement as a whole must be considered "… as the agreement as a whole forms the context in which the words used must be interpreted" (*Burgess v. Treasury Board (Department of Fisheries and Oceans)*, 2017 FPSLREB 20 at para. 69).

[31] In *Lessard v. Treasury Board (Department of Transport)*, 2009 PSLRB 34 at para. 32, the adjudicator cites the following passage from Brown and Beatty, *Canadian Labour Arbitration*:

> It has often been stated that the fundamental object in construing the terms of a collective agreement is to discover the intention of the parties who agreed to it.…
>
> …
>
> Accordingly, in determining the intention of the parties, the cardinal presumption is that the parties are assumed to have intended what they have said, and that the meaning of the collective agreement is to be sought in its express provisions.…
>
> …
>
> In searching for the parties' intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless that would lead to some absurdity or inconsistency with the rest of the collective agreement, or unless the context reveals that the

words were used in some other sense.…

[32] The starting point for interpreting the collective agreement is that the Board does not have the authority to amend it by its decision (s. 229 of the *Act*). Therefore, the interpretation must respect the collective agreement's wording. In *Communications, Energy and Paperworkers Union of Canada v. Irving Pulp & Paper Ltd.*, 2002 NBCA 30, the New Brunswick Court of Appeal summarized as follows how to interpret a collective agreement:

…

> ***10*** *It is accepted that the task of interpreting a collective agreement is no different than that faced by other adjudicators in construing statutes or private contracts: see D.J.M. Brown & D.M. Beatty,* Canadian Labour Arbitration*, 3rd ed., looseleaf (Aurora, Ont.: Canada Law Book, Inc., 2001) at 4-35. In the contractual context, you begin with the proposition that the fundamental object of the interpretative exercise is to ascertain the intention of the parties. In turn the presumption is that the parties are assumed to have intended what they have said and that the meaning of a provision of a collective agreement is to be first sought in the express provisions. In searching for the parties' intention, text writers indicate that arbitrators have generally assumed that the provision in question should be construed in its normal or ordinary sense unless the interpretation would lead to an absurdity or inconsistency with other provisions of the collective agreement: see* Canadian Labour Arbitration *at 4-38. In short, the words of a collective agreement are to be given their ordinary and plain meaning unless there is a valid reason for adopting another. At the same time, words must be read in their immediate context and in the context of the agreement as a whole. Otherwise, the plain meaning interpretation may conflict with another provision.*

…

[33] The grievor claims that he is entitled to have three additional years of teacher education recognized with respect to his second bachelor's degree, in education. I understand from the collective agreement's wording that the expression "year of teacher education" used in paragraph 4 of the pay notes in Annex A2 includes the following definition: "[a] year of university study, completion of which is officially certified by an educational establishment." The employer claims that according to this definition, the grievor has only two additional years of study after obtaining the first bachelor's degree, in psychology.

[34] In the context of the collective agreement, the employer's argument to the effect that the university year must be interpreted as a calendar year is contradicted by paragraph 5 of the same pay notes in Annex A2 of the collective agreement, which deals with experience. In fact, paragraph 5 specifically provides that the calculation of a "full year of experience" can vary considerably. It states the following:

> *5.* ***Experience***
>
> …
>
> **
>
> *b. A full year of experience prior to appointment will be allowed for any of the following:*
>
> *i. any full academic year at an establishment, recognized or accredited by a school board or provincial Department of Education, that is, eight (8) months (university teaching), ten (10) months (elementary and secondary school teaching) or eleven (11) to twelve (12) months (government teaching or a recognized commercial school);*
>
> *ii. any portion of an academic year of six (6) months or more ….*
>
> …

[35] Although that passage is not determinative to understanding the meaning of the expression "year of university study" used in Note 6 of the pay notes in Annex A2 of the collective agreement, it does illustrate that the concept of year in the context of education is quite vague. Therefore, it is appropriate to question the meaning of a year of teacher education or of university studies.

[36] The official certification of the three years of study that the grievor claimed is in the form of an official transcript that certifies that a bachelor's degree in secondary education was conferred on him in November 1995. His transcript indicates that the required 90 credits were completed.

[37] The grievor was able to shorten the three-year period ordinarily required to obtain a bachelor's degree in education in some ways — he completed two supplementary courses, one in the winter of 1993, the other in the summer of 1993, while pursuing his first bachelor's degree, in psychology, before beginning the second bachelor's degree program, in education, for which the employer recognized two years

of teacher education. During those two years, he also took a supplementary course in three of the four semesters. Finally, for his second bachelor's degree, in education, the Université du Québec recognized 15 credits from his first bachelor's degree, in psychology.

[38] The parties agree that the grievor did not study for three full years to obtain his second bachelor's degree, which is in education. He studied for two-and-a-half years. He worked hard for 3 of the 4 semesters, and 15 credits were recognized from his first bachelor's degree, which is in psychology. In my view, the most important thing is that the official transcript that the collective agreement requires recognizes that he has the equivalent of 3 university years, i.e., 90 credits, for his second bachelor's degree, the one in education. It seems to me that it would be wrong to recognize only two additional years of university studies when he obtained a second bachelor's degree, which was conferred after three years of university studies or equivalent. Once again, the transcript, which is the official certification required by the collective agreement, recognizes that he has 90 credits, i.e., the equivalent of 3 years of university studies.

[39] The intention expressed by the employer and the PSAC in the pay notes in Annex A2 of the collective agreement is to recognize as teacher education any university training certified by a recognized educational establishment. The evidence before me clearly shows that the Université du Québec à Trois-Rivières awarded the grievor his second bachelor's degree, in education, based on 90 completed credits, which normally take three years of study. It seems to me that it would betray the expressed intention of the employer and the PSAC if it were denied that a three-year university program was achieved by crediting him with a period of shorter duration.

[40] Perhaps my finding might have been different had the disputed third year been made up only of credits completed in the first program. In this case, half of the third year is made up of credits from the first program and half for credits acquired in the context of additional courses (and efforts). That is enough for me to consider that the official certification, which envisions a 90-credit program, can be used to calculate the 3 years of teacher education. Recognizing only 2 years of teacher education would deny the actual attainment of the 15 credits required for the second bachelor's degree.

[41] Since my opinion is that the grievance is founded, the hearing will resume to address the timeliness of the filing in this case.

[42] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[43] I declare the grievance founded.

[44] The hearing will resume to address the timeliness of the filing applicable to this case and the application for an extension of time, if necessary.

September 20, 2018.

FPSLREB Translation

Marie-Claire Perrault,
a panel of the Federal Public Sector
Labour Relations and Employment Board