

Date: 20191115

File: 566-02-06523

Citation: 2019 FPSLREB 111

*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

MELODY RAABE

Grievor

and

TREASURY BOARD

(Department of Indian Affairs and Northern Development)

Employer

Indexed as

Raabe v. Treasury Board (Department of Indian Affairs and Northern Development)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: Pamela Sihota

For the Employer: Zorica Guzina, counsel

Heard at Winnipeg, Manitoba,
February 12 and 13, 2019.

REASONS FOR DECISION

I. Summary

[1] Melody Raabe (“the grievor”) worked as a compensation advisor (AS-02) in the Department of Indian Affairs and Northern Development (“the respondent”). In her grievance, which she referred to adjudication, she alleged that her employer violated clause 54.01 of the Program and Administrative Services Group collective agreement between the Public Service Alliance of Canada and the Treasury Board (expiry date: June 20, 2011; “the collective agreement”), which required that upon request, an employee be provided with a complete and current statement of the duties and responsibilities of his or her position. As corrective action, she requested that additional duties and responsibilities be added to her job description. The matter was referred to adjudication on January 27, 2012.

[2] The grievor testified that among other things, she worked independently, provided departmental officials with interpretations of legislation, and developed policy, all of which was alleged to be missing from her work description. It was also noted that she had succeeded another employee in a position that had been classified AS-03, and she alleged that her supervisor told her that she would be promoted to that higher classification upon taking over those duties. The grievor testified that she was not promoted but that she continued to perform the same duties as had her predecessor.

[3] The respondent replied that the AS-03 position was eliminated, that the grievor did not work independently and did not write policy, and that her AS-02 position description adequately captured her duties.

[4] Having listened carefully to all the testimony and the representatives’ submissions, I conclude that the grievor failed to meet her burden of proof to bring clear and convincing evidence that upon a balance of probabilities would prove her allegations. Accordingly, the grievance is denied.

II. Evidence

[5] The grievor testified that she commenced her tenure in the public service in 1986. Her AS-02 compensation advisor position, at issue in this matter, was offered to her in a letter dated April 8, 2008. She was trained and then assumed her duties (at an

AS-02 level), which she stated meant being responsible for half the staff in her directorate. She stated that she was in a “pay person” position but that she performed the same duties as the other compensation “specialist”, who was classified at the AS-03 group and level.

[6] The grievor testified as follows:

- Ms. Olynick, whom the grievor replaced, told her that all the employees in the grievor’s half of the directorate were the grievor’s responsibility. The grievor had worked alongside Ms. Olynick when she started in her position, to learn Ms. Olynick’s duties.
- She took over Ms. Olynick’s duties when Ms. Olynick left the office.
- During her time in the position, Ms. Olynick had succeeded in having her AS-02 position reclassified to AS-03.
- She carried out labour relations tasks. For example, she dealt with terminations.
- She worked alongside Linda Nichols, a compensation specialist at the AS-03 group and level; the grievor and Ms. Nichols performed the same work with the same level of difficulty. They both reported to Diane Bodnar, the director of Human Resources (HR).
- No other staff in the office performed the tasks that the grievor and Ms. Nichols carried out.
- Both she and Ms. Nichols had the same responsibilities and the same line of communication to the head office for direction to complete tasks, if necessary.
- Only managers or self-directed staff were allowed access to the headquarters helpline.
- Her daily duties included handling pay and benefits correspondence for her employees, pay and benefits matters for a deceased employee, personal leave calculations and advice given to managers at their request for them to make decisions for an employee, retirement date rules and implications for pension entitlements, insurance coverage information, how to request an advance of sick leave and tax implications for all payroll actions.

- She answered managers' questions about absenteeism.
- She researched and advised managers on payroll and benefits issues related to special cases, such as a staff member who took another job without permission and while on leave.
- She fielded leave and payroll questions for cases of substance abuse.
- She would often recommend changes to policies, to address payroll problems.
- She reviewed legislation and policies that included tax, bankruptcy, and garnishment and had authority under ss. 32 and 34 of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*), which she said an AS-02 did not usually have.
- She had s.34 authority to release funds to an employee if they were owed;
- She received calls directly from staff and senior managers all requesting she independently fix payroll errors;
- She researched legislation and policies and used a compensation website to prepare payroll and benefits advice for managers. She was also on an email distribution list that was usually reserved for managers and that provided updates on payroll and benefits issues.
- Her manager did not have technical knowledge of her payroll and benefits work so the grievor proceeded on a self-directed basis and she and Ms. Nichols verified each other's work in order to do pay actions;
- She would prepare payroll actions so that her Director could simply ask if everything was ok and without checking herself then "push the button" on the computer to action the payment of payroll once the grievor said it was all in order;
- She was responsible for identifying and remedying any errors arising from her work.
- Both she and Ms. Nichols would call the compensation manager, Mr. Pacquin, directly when needed to confirm the resolution of an issue, but normally, only managers could call him directly.

- Upon commencement she quickly realized that she was doing AS-03 work and so she asked Ms. Bodnar if she could be reclassified to the AS-03 and was told in reply that this would be done after 6 months of her work. But after 6 months she was told that despite her doing all the same work as AS-03 Ms. Nichols that she was going to get a new position description and report to Ms. Nichols as headquarters had said no new AS-03 payroll advisers would be allowed.
- The office organization chart showed that both Ms. Nichols and Ms. Olynick occupied AS-03 positions. When the grievor had to take extended leave, Ms. Olynick was brought back from retirement to work as temporary relief during her absence and was paid at an AS-03 rate.
- She was listed in the GEDS phone directory and her business cards showed her as a compensation specialist but that after filing this grievance she was given a copy of a new organization chart dated April 18, 2011 where she was listed as a compensation advisor.
- She was self-managed and was picked to work on the project named “E-pay”, which was otherwise resourced with management representatives.
- The difference between advisory and specialist is that advisors are not self-managed and usually do not deal directly with clients and managers to deliver advice and other services.
- A February 23, 2011, Pay Interface meeting memo, which was produced as an exhibit, captured the details of a meeting the grievor attended as the only MB representative, and all the other participants were managers.
- On January 19, 2011, she authored a two-page advice memo to Ms. Bodnar, which was entered as an exhibit. It provided the results of her research into tax implications for payroll for “Status Indians to Public works”. The memo cites statutes and Canada Revenue Agency policies as authorities for how to deal with several tax implications for payroll matters.
- She was given a compensation advisor’s work description, which was submitted as an exhibit. She stated that Ms. Bodnar had given it to her and had explained that it was associated with the grievor’s position. She testified that it stated that it was updated in 2007, but in her view, it was the same as the version from 2000.

[7] In cross-examination, the grievor testified as follows:

- She did not have the authority to approve leave requests.
- In fact, her manager had told her not to provide labour relations advice. The grievor then clarified that she would work to resolve such matters but that she would not offer advice on matters that labour relations advisors would normally deal with.
- She thought that she had authority under ss. 32 and s. 34 of the *FAA* to commit and expend funds but clarified that her manager would “hit the button” on the computer to effect the transfer of the funds.
- Ms. Nichols had no time to train her. When the grievor started, she had not been fully trained, so she made errors and worked slowly. That caused frustration, but it was brief and lasted only while she learned all the office duties.
- She clearly remembered talking to Ms. Bodnar, who told her to work in the position for six months before they would request reclassification to AS-03.
- After looking at a memo she authored on April 14, 2010, about an emergency salary advance, she acknowledged that she wrote that she needed Ms. Bodnar to authorize expending funds under s. 34 of the *FAA*. But she then added that when Ms. Bodnar was absent, she had the signing authority to approve expending funds.

[8] Ms. Bodnar was the HR director for the 10 years preceding her retirement in December 2012. She oversaw the grievor’s work. She appeared as a witness.

[9] In her examination-in-chief, Ms. Bodnar testified as follows:

- Before the grievor began working in the office, the two compensation staff members (Ms. Nichols and Ms. Olynick) had worked together, and Ms. Olynick had applied for reclassification. Before she accepted the director position, the reclassification was approved to AS-03, without senior management’s input. Head office was very unhappy once it learned of the reclassification. Subsequently, a direction was issued that no further AS-03 compensation specialist positions were to be created or hired into.

- Her director general directed her to bring her office into line with the new edict that there would be no more AS-03 positions.
- She decided not to “red-circle” the two staff members at issue but rather committed to ensuring that when they left the office, the replacement staff filling their positions would be classified AS-02. She pointed to a classification evaluation rationale that she signed confirming the AS-02 classification.
- In fact, she did bring Ms. Olynick back from retirement for some temporary work when the grievor was on extended leave as she said that it was very difficult to find experienced compensation advisors who would not need training and who could be productive to help reduce a very significant work backlog.
- She handled any difficult files herself, worked directly with managers and directors, and then let the compensation advisors handle the payroll outcomes on files.
- All compensation staff could contact Mr. Pacquin for payroll advice.
- Soon after the grievor began working in her branch, she raised the issue of reclassification to AS-03. Ms. Bodnar refuted the grievor’s testimony on this point and stressed that she told the grievor that that reclassification was not possible and would not happen. This same message was consistently communicated to her whenever the reclassification issue arose.
- She was the only one in the branch with the authority under s. 32 of the *FAA* to commit the expenditure of funds. She stressed that neither the grievor nor Ms. Nichols ever held that authority.
- In fact, she did delegate the s. 34 authority under the *FAA* to “push the button” to process payments to both the grievor and Ms. Nichols.
- She alone held the authority to approve leave, travel, etc., for both the grievor and Ms. Nichols. She stressed that neither of them had the authority to approve their own or each other’s leave and travel.
- If the grievor’s position were properly classified AS-03, then every AS-02 in the department would need to be elevated to AS-03.

[10] In cross-examination, Ms. Bodnar testified as follows:

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

- The grievor was not self-managed or independent in her work. Ms. Bodnar stressed that she was a “very hands-on manager” for all her staff, including the grievor.
- When she was presented with a work description, Ms. Bodnar stated again that the grievor was not part of a self-managed work team as suggested in the exhibit but rather she stated that she closely supervised all her staff. Ms. Bodnar added that if the grievor was self-managed according to the document at issue, then every public servant could be said to be self-managed.
- In response to being confronted with the changes to the grievor’s title, Ms. Bodnar stated that the office was in disarray when she began as the director and that documents like the organization charts and phone directories had been prepared without the director’s input. After this grievance was filed, she updated the new organization chart to correct the title.
- At no time did she approve of the grievor being called a compensation specialist.
- When she was challenged that she must have approved the grievor’s business cards, which stated that the grievor was a specialist, Ms. Bodnar stated that had she noticed that title, she would have corrected and removed it before allowing the cards to be printed.

III. Summary of the arguments

A. For the grievor

[11] In her review of an AS-03 position description, the grievor’s representative suggested the following core duties were established in evidence as being duties of the grievor and currently missing from her AS-02 position description:

- ...
- *Analyses and interprets acts, regulations and directives and develops and implements procedures, methods and work processes...*
- ...

- *Explains, analyses, interprets and provides strategic advice concerning the impact of changes in federal and provincial legislation and regulations [etc.] ...*
- *Participates as a member of a self-managed work team...*
- ...
- *Interprets, clarifies, writes procedures and implements legislative, regulatory and directed policies. ...*
- ...
- *[The work requires knowledge of] principles and practices of leadership, team dynamics and self-managed work teams to provide advice and feedback and to plan and make decisions in the absence of a formal "subject expert" supervisor;*
- ...
- *Develop and improve policies, standards, and work processes; the organization, methods of operation and programs of the assigned client area in order to better understand their business needs and to ensure they are provided with the appropriate compensation services; and the client area served by colleagues in order to refer managers/employees to the appropriate advisor. ...*
- ...
- *Reading skills are required to interpret, understand and analyze legislation, regulations, policies and directives to determine if procedural changes are required. ...*
- ...
- *[Intellectual effort includes interpretation and synthesis for] legislation, regulations and directives into a more readily understood format for the use by other compensation staff, human resource practitioners, managers and employees. ...*
- *Evaluates and analyses new legislation, regulations, policies and directives; formulates strategic and detailed plans for implementation; determines the effect of changes on compensation and benefits resources [and] prepares procedures; ...*

[12] The grievor's representative noted that the grievor testified that she carried out the same duties as Ms. Nichols, who held an AS-03 position that had been reclassified from AS-02 just before the grievor began working in the office. She also argued that Ms. Bodnar testified that the grievor had replaced Ms. Olynick and had assumed her duties, which should be seen as an admission that she carried out AS-03 duties.

[13] The representative drew special attention to the grievor's testimony, in which she stated that her director really did not know much about her work and that she worked in a completely self-directed manner. She then pointed out that such self-directed work was missing from the AS-02 work description. She also noted that the grievor testified that she had several avenues of access to management-level work groups and to lines of communication not usually enjoyed by AS-02 advisors.

[14] As detailed in the citations later in this decision, the grievor suggested that she draws upon some specific language from the higher-classification AS-03 work description for some of her duties that she said are missing from her current AS-02 description.

[15] And finally, the grievor relied upon her testimony of her time working in a self-directed manner with virtually no supervision or technical oversight from her director. She also noted the memos that she authored, which were tabled as exhibits in support of her argument that she conducted advanced and complex technical payroll-related policy development and that the employer relied upon her research and knowledge of legislation and policy.

B. For the respondent

[16] Counsel for the respondent submitted that on a balance of probabilities, the evidence before me does not establish that there are any omissions or errors in the grievor's current statement of duties and that the grievance should be denied.

[17] Counsel noted that the Board and its predecessors have found that generic job descriptions are a common instrument within the public service, especially when the duties and responsibilities are to be performed on a national scale and by a large number of employees. As long as the job description sufficiently describes in broad terms the full range of duties and responsibilities attributed to the position and it reflects the realities of the employee's work situation, all is well. (See *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145 at para. 28.)

IV. Analysis and conclusions

[18] It is necessary to set a proper context for this decision by recognizing that Parliament has established clear authority for the employer to assign duties and work

descriptions pursuant to its powers of determining terms and conditions of employment under s. 7(1) of the *FAA*.

[19] As has been well established before the Board, a grievor carries the burden of proof of establishing that on a balance of probabilities, the employer violated the collective agreement by failing to provide a complete and current statement of the duties and responsibilities of the grievor's position.

[20] Adjudicators do not have jurisdiction to establish classification but rather can find that an employee's statement of duties and responsibilities is not current or complete, declare that a collective agreement has been violated, and order that a current and complete statement of duties be provided. See *Meszaros v. Treasury Board (Department of Justice)*, 2016 PSLREB 29 at paras. 155 and 156, which cites paragraph 3 of *Aphantitis v. Treasury Board (Department of Justice)*, 2014 PSLREB 85.

[21] The Board has also found that the role of adjudicators is not to correct the wording or the expressions used in a work description as long as they broadly describe the responsibilities and the duties being performed. (See *Suric v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 44 at para. 48, relying upon *Jarvis v. Treasury Board (Industry Canada)*, 2001 PSSRB 84 at para. 95.)

[22] The two work descriptions at issue before me comprise 15 and 11 pages respectively, which is such an enormity of text that in their arguments, both parties were able to point to language in the descriptions supporting their versions of the evidence.

[23] In her closing arguments, the grievor's representative acknowledged that not every task or duty need be captured in a work description for an employer to satisfy its duty under article 54 of the collective agreement and that generic descriptions can be adequate. See, for example, *Dervin v. Treasury Board (Department of National Defence)*, 2009 PSLRB 50 at paras. 41 and 42.

[24] However, she added that the work description must cover all key activities and that the evidence before me clearly establishes that the grievor did the same work as Ms. Nichols, who held an AS-03 position, which would thus justify me finding that the grievor's AS-02 work description was deficient.

[25] I prefer to focus my inquiry into the grievor's work description by dealing solely with it and her duties. I do not have enough evidence about Ms. Nichols's work for me to accept the grievor's argument that if Ms. Nichols is an AS-03, then the grievor should be too. That would require me to pass judgement on Ms. Nichols's statement of duties, which is not before me.

[26] Similarly, I place no probative value on the matter of the phone number listing and business card evidence that the grievor presented as neither is related to my inquiry into whether her duties and responsibilities are captured by her work description.

[27] The grievor noted the findings in *Meszaros*. In that case, Adjudicator Olsen commented upon differently classified work descriptions not being entirely mutually exclusive and on lower-classified descriptions often using language that is more general and that may be encompassed into higher-level work descriptions. He then considered another case, which considered and rejected the converse, in which the employer argued that a key activity of a higher-classified position could fit within a more generic clause of a lower-classified position with similar duties. (See *Meszaros*, citing Adjudicator Richardson in *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20 at paras. 69 to 72.)

[28] I emphasize that both adjudicators (see *Meszaros* and *Jennings*) specifically referenced "key activities" at several junctures of their analyses of the work descriptions at issue in those decisions. I have noted their wise guidance in finding that work descriptions do not necessarily need to capture every single task. The usefulness of generic descriptions has also been noted, especially in positions such as the grievor's in the matter before me, which on the evidence, does not appear to be in any way unique and is most likely replicated in every region in the country.

[29] In light of all the authorities submitted by the parties, it is perhaps not surprising that their arguments helpfully coalesced into a small number of foundational or key activities, which were subjected to detailed testimony. They factor significantly in the grievor's existing work description. I will outline my analysis of the key attributes and will make the necessary findings of fact in support of my conclusions.

A. Self-directed work

[30] The grievor testified forcefully as to her belief that she worked independently and that her supervisor had no technical knowledge whatsoever of the many tasks she was responsible for in her day-to-day duties. She also noted that she sat on committees and that she had access to a national resource dedicated solely to management support.

[31] The grievor also pointed to the 2005 classification evaluation rationale that was prepared in consideration of reclassifying the AS-02 compensation position to AS-03. This document states that the "... Compensation Specialist positions ... in Manitoba are a self-managed work team that report directly to the Director ...".

[32] Given the contradictory evidence on the matter of whether the grievor was self-directed and worked independently, I conclude that she might have believed that she worked independently but that she did not establish that she worked in a self-directed manner such that it would have allowed her to choose her work and to control outcomes beyond providing information and payroll advice to clients.

[33] I am not persuaded by the inference raised in the 2005 document as the grievor was not employed in the position at that time, and no evidence was presented as to office responsibilities at that time as compared to when she worked there.

B. Level of responsibility and authority

[34] The two witnesses provided contradictory evidence on the matter of the grievor's claim that she possessed the authority under s. 32 of the *FAA* to approve the commitment of funds. I prefer Ms. Bodnar's testimony on this point as I find it more likely than not that a director would have a very clear understanding of his or her duties under the *FAA*. I further find it more likely than not that as Ms. Bodnar stated, the department limits the delegation of the s. 32 authority, to keep firm financial controls in the hands of managers. As such, I conclude that the grievor did not possess delegated s. 32 authority.

[35] They also provided opposing and contradictory evidence on the matter of the grievor's claim that she was a member of committees and had phone access to a senior manager that was otherwise exclusive to management and not available to other payroll advisors. I prefer Ms. Bodnar's testimony on this point as she denied the

grievor's claims. I note that no evidence was tendered that would explain and justify how the grievor was so specially placed that she might have been the only AS-02 with such special roles otherwise reserved for managers.

[36] I am not persuaded by the evidence suggesting that the grievor had access to what were otherwise management-only committees or national management helpline phone numbers. This evidence was disputed. Even were I to accept her testimony, I am not convinced that it would require amending her existing work description.

[37] Perhaps most importantly, the grievor testified at length and provided helpful examples of her written work that for example, provided detailed technical information on the tax implications of payroll actions for an indigenous employee. The grievor provided other examples of her activities, which she presented as self-directed work interpreting law and policy and preparing guidance information for the branch in handling important matters such as the income tax treatment of payroll situations.

[38] Counsel for the respondent did not deny the grievor's good work but submitted that the work description of her existing AS-02 position fully captures all that work.

[39] While the grievor's good work was shown in the several memos she authored setting out advice related to tax implications for a specific payroll issue, I find that these duties fit within the "Key Activities" section of her existing work description, as follows:

...

Determines employee entitlements with respect to a wide range of complex compensation and benefits issues and provides expert advice, counselling and information to ... a wide variety of compensation transaction requests and ... benefits data and records.

...

Researches, analyses [sic], explains, clarifies and applies changes in federal and provincial legislation, regulations, collective agreements, pensions and insurance plans, new government programs affecting employees' compensation and/or benefits ... and assesses the implications of these changes for both the employees and the organization.

...

[40] The grievor presented evidence and argument that noted comparative situations to her office co-worker, Ms. Nichols, and her predecessor, who was brought out of

retirement to work while the grievor was away on leave, being paid at the AS-03 level. The grievor asserted that she performed the same work and that the other staff members being paid at the higher classification should convince me that her position was not properly classified.

[41] The comparisons to staff in other positions do not convince me. This grievance was focused solely upon whether the grievor had a full and complete position description that adequately captured all her own duties and responsibilities. Whether a co-worker's position is properly classified and why a temporary worker is hired and at which pay rate to do duties which were not examined before me are not matters which I will rely upon in determining whether the grievor's duties are properly captured in her existing work description.

[42] In conclusion, I find that the evidence before me has not established that the grievor worked in a self-directed or self-managed manner. Similarly, I find that the advice and the work products and services that she provided to her clients fit within her existing AS-02 work description. I do not have sufficient evidence to make a finding that the grievor was self-managed, or developed policy or interpreted legislation which are the foundational aspects of the core functions argued to be missing from the grievor's current work description.

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

(The Order appears on the next page)

V. Order

[44] The grievance is dismissed.

November 15, 2019.

**Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board**