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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

CHRISTINE LODGE

Grievor

and

TREASURY BOARD
(Department of Transport)

Employer

Indexed as
Lodge v. Treasury Board (Department of Transport)

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: Lindsay Cheong, Public Service Alliance of Canada

For the Employer: Holly Hargreaves, counsel

Heard at Winnipeg, Manitoba,
November 22, 2019.

REASONS FOR DECISION

I. Summary

[1] Since April 1, 2010, Christine Lodge ("the grievor") has worked as a civil aviation safety inspector in an aerodromes and air navigation position classified at the TI-06 group and level at the Transport Canada ("the employer") Civil Aviation Branch in its Prairie and Northern Region. She has held a private pilot's licence since 2007.

[2] On August 13, 2014, the grievor filed a grievance in which she claimed that she was entitled to a terminable allowance provided in Appendix "P" of the collective agreement. She believed that she was entitled to the allowance based on a Public Service Labour Relations Board (PSLRB) decision that was issued in 2009. I will analyse this decision later in my reasons.

[3] This case considers a terminable allowance payable to employees who meet a very specific set of technical and educational criteria.

[4] Based on the facts and the evidence before me, I conclude that the grievor does not qualify for the allowance, and I deny her grievance.

II. Background

[5] On February 6, 2012, the grievor submitted a request to receive the "terminable allowance - aviation" provided in Appendix "P" of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Technical Services Group. The relevant parts of that appendix read as follows:

> …
>
> *In an effort to resolve retention problems, the Employer will provide an allowance to incumbents of specific positions for the performance of duties in the Technical Inspection Group.*
>
> …
>
> *Employees in Transport Canada, Transport Safety Board …who are incumbents at the TI-5 through TI-8 levels in the following positions and who possess the listed qualifications shall be entitled to Terminable Allowances as listed below.*
>
> …
>
> *- Civil Aviation Safety Inspectors holding a university degree, college certificate or a current membership in the American*

> *Society for Quality Control, with six (6) to ten (10) years of manufacturing process experience.…*
>
> …

[6] The employer stated that the grievor did not have the required educational or the 6 to 10 years of manufacturing process experience and denied her request.

[7] On October 18, 2013, the collective agreement was renewed with an expiry date of June 21, 2014, and Appendix "P" was updated to read as follows:

> …
>
> *Employees in Transport Canada, Transport Safety Board … who are incumbents at the TI-5 through TI-8 levels in the following positions and who possess the listed qualifications shall be entitled to Terminable Allowances ….*
>
> …
>
> · *civil aviation safety inspectors holding a university degree, college certificate or a current membership in the American Society for Quality Control who have six (6) or more years of industry experience in the performance or supervision of aeronautical product manufacturing processes.…*
>
> …

[8] On April 23, 2014, the grievor submitted another request for the terminable allowance - aviation that included supporting information.

[9] On July 25, 2014, the employer again denied her request on the same grounds as before and stated that the new collective agreement wording did not impact its previous decision.

[10] On August 13, 2014, she grieved that the employer violated Appendix "P" of the collective agreement and alleged that she was wrongly denied the terminable allowance.

[11] The final -level response of the employer dated July 28, 2015 states that they had recognized the grievor's university certificate as being equivalent to that required criteria.

[12] It also stated that there was a difference between the design development process and the product manufacturing process. The latter process is used to make or create an object or product from raw materials whereas the design development

process was considered the conception/planning stage of the design, the step that takes place prior to the manufacturing process. As such airspace design development was not product manufacturing.

[13] The employer also stated that the *Canada Air Pilot* "(CAP") manual was development not an aeronautical product as per the definition set out in the *Canadian Aviation Regulations*, SOR/96-433 at 521.01. (*CAR*)

[14] The *CARs* define the CAP as "… an aeronautical information publication published by NAV CANADA that contains information on instrument procedures …".

[15] The grievance was referred to adjudication on September 4, 2015.

III. The grievor's evidence

[16] The grievor testified as follows:

- She designs instrument procedures that are published in the CAP manual.
- She consults TP-308 criteria when designing instrument procedures (she noted that chapters 1 to 18 of the TP-308 guide relate to instrument take-offs and landings and that chapter 2 deals with minimum safe altitudes).
- She ensures that all specifications are met and that her runway approach designs are as least complex as possible for pilots.
- She studies and speaks with stakeholders (e.g., pilots and air traffic controllers) to build external factors (e.g., obstacles near a flight path such as trees, communications towers, buildings, etc.) into her landing approach designs.
- She researches radio frequencies and altimeter sources and validates the data to give pilots reliable information in the approach maps that guide them to runways.
- Redundancy planning is built into her work to foresee scenarios such as an aborted landing or instrument failure are all foreseen and planned with instructions at hand in the CAP manual that she prepares instructions for;
- She reviews relevant updates and applications for permitting for things such as new communications towers that might be in the vicinity of a flight path.

[17] A great deal of testimony was provided to establish the intricate and precise research and planning and expertise possessed by the grievor for her preparation and publishing of the airport runway approach, landing and takeoff instructions that ensure Canadian pilots and travellers enjoy safe air travel.

[18] The grievor's high level of detail in her work and her expertise were plainly evident and very impressive.

[19] The grievor also confirmed the previously noted requests, denials and grievance related to her seeking the terminable allowance. She stated that the employer recognized her education and meeting criteria for the allowance but that her work in the design and the *Canada Air Pilot Instrument Procedures* manual (CAP 3) was deemed as not meeting the definition of aeronautical manufacturing process.

IV. The employer's evidence

[20] David White, a retiree who was the employer's associate director of operations, testified about his involvement in the matter. He indirectly oversaw the grievor's work and received her request for the terminable allowance.

[21] Mr. White testified that:

- The grievor's "civil aviation safety inspector - Aerodromes and Air Navigation" work description included the following client service results:

> *Conduct of aviation certification safety oversight and related service activities of individuals, enterprises, organizations, other government agencies and Minister's delegates as they specifically relate to aerodromes and airport zoning regulations and airspace (as it relates to airport zoning regulations) to assure compliance with the Civil Aviation regulatory framework and promote a proactive enterprise wide Safety Management System (SMS) culture, for the safety of civil air operations in Canada.*

- In the revised Appendix "P" of the collective agreement, where the phrase "aeronautical product manufacturing processes" was inserted to replace the former "manufacturing processes" the employer sought to clarify the meaning of that as it relates to awarding the allowance.
- An aeronautical product in an aircraft includes parts such as engines, propellers or jet turbines, wings, landing gear, fuselage, and other components that together form an airplane.
- An aircraft has wings that at speed create air pressure to lift the craft and sustain it in the air to provide flight.
- The various parts of an airplane, that were described in detail are all built to exacting specifications and rigorously tested and certified as to both construction and maintenance.
- Airplanes have computer systems and software that enable their mechanical operations and operational functionality such as navigation.
- Specifically, the navigational computer's software program must be updated regularly and certified to meet the necessary *CARs* standards.
- He cited the definition of "aeronautical product" in s. 521.01 of the *CARs*, as it read at the relevant time, as follows: "***aeronautical product*** means an aircraft, aircraft engine, aircraft propeller or aircraft appliance or part, or a component part of any of those things" [emphasis in the original].

- He reviewed and deemed the grievor's request for the allowance as non-compliant due to her not having aeronautical product manufacturing experience.
- In his view, the criteria require experience such as taking basic materials (e.g., steel) and using machines and tools to build and assemble aircraft engine parts that when fully assembled on a certified plane, allow it to fly.
- He compared that experience to the grievor's, who he said provided input that was later published in Transport Canada or NAV CANADA documents.

[22] During cross-examination, Mr. White testified as follows:

- The grievor told him that she produced publications for NAV CANADA and that the primary document was the CAP.
- The CAP is related to air travel and that pilots use the CAP but that it is not necessary for a pilot to have or use the CAP in order for a plane to fly.
- He acknowledged that the grievor's work went into producing the CAP, and he said that it was a product, just as a water bottle is a product.

V. The grievor's argument

[23] The grievor argued that she satisfied all the requirements in Appendix "P" of the collective agreement for the allowance.

[24] She said that the evidence clearly established that she produces charts with landing routes and instructions for pilots to guide them in safely landing an aircraft. Mr. White conceded as much.

[25] She also said that it was established that her work is published in the CAP, which should be found to be an aeronautical product as it is used by pilots in flight.

[26] The grievor primarily relied upon contract interpretation arguments and the PSLRB's decision in *Lessard v. Treasury Board (Department of Transport)*, 2009 PSLRB 34 at para. 40:

> *40 I rely on those definitions and am of the opinion that, in this case, it is not appropriate to depart from the ordinary meaning of the words. Nor do I see on what basis I would limit the manufacturing process experience required under Appendix "P" to the industrial or manufacturing sector. In applying the definitions provided in the dictionary for the expressions "process," "manufacture" and "manufacturing," I am of the opinion that Mr. Lessard's work experience at Health Canada may be considered manufacturing process experience. The evidence has established that the laboratory technologists manufactured microbiology culture mediums, solutions and supplements by following recipes and using materials and ingredients. The culture mediums, solutions and supplements are a "product" that is different from the initial ingredients. The ingredients are the raw materials that*

> *are processed by means of a method, a process, a specific recipe. In my opinion, the process corresponds to a general concept of what is meant by a manufacturing process. Appendix "P" of the collective agreement does not specify that the employee must have designed a manufacturing process; the employee must simply have manufacturing process experience. In my opinion, Mr. Lessard has that experience because he was called on to apply and to supervise the implementation of processes for manufacturing microbiology culture mediums, solutions and supplements. Since nothing in Appendix "P" leads me to adopt a more restrictive interpretation of the expression "manufacturing process," I am of the opinion that Mr. Lessard's experience satisfies the eligibility criterion set out in Appendix "P." With respect to the length of Mr. Lessard's experience, the evidence has established that his experience totalled 10 years and 8 months. In light of the foregoing, therefore, I conclude that Mr. Lessard satisfies the eligibility criteria for payment of the terminable allowance.*
>
> [Emphasis added]

[27] The grievor addressed the fact that Appendix "P" was amended after *Lessard* to include the requirement that experience in manufacturing be related to aeronautical products, which she stated her input into producing the CAP manual clearly satisfies.

[28] She argued that I should not place a specialized and restrictive interpretation on the word "manufacturing". She noted that the Board accepted this approach to interpretation in *Lessard* the same as she proposed in the matter before me.

[29] She also submitted that the parties themselves specifically did not incorporate or rely upon the definition of "aeronautical products" as it exists in s. 521.01 of the *CARs*. As such, she submitted that I should look at dictionary definitions and accept those common-usage definitions.

[30] She cited Brown and Beatty, *Canadian Labour Arbitration*, *Fifth Edition*, at 4:2000, which states as follows:

> *… the words (of collective agreements) must be read in their entire context, in their grammatical and ordinary sense … and that the cardinal presumption is that parties are assumed to have intended what they have said, and that the meaning of collective agreements is to be sought in its express provisions.*

[31] She also cited the *Concise Oxford Dictionary*, *Tenth edition*, *revised*, for the following definitions:

> …
>
> ***aeronautics*** *… the study or practice of travel through the air ….*
>
> …
>
> ***product*** *… **1** an article or substance manufactured or refined for sale … a substance produced during a natural, chemical, or manufacturing process ….*
>
> …
>
> ***manufacture*** *… **1** make (something) on a large scale using machinery. **2** (of a living thing) produce (a substance) naturally. **3** make or produce something (abstract) in a merely mechanical way. **4** invent or fabricate (evidence or a story) ….*
>
> …
>
> ***process*** *… **1** a series of actions or steps towards achieving a particular end ….*
>
> …

[32] When these definitions are compared to the words of Appendix "P" (*aeronautical product manufacturing processes)* the grievor argued that her creation of content for the CAP clearly fit the Oxford definitions as just cited.

[33] Her testimony earlier about her work fit the definition of invent or fabricate in her creation of content for the CAP. And that this was a product which was related to aeronautics as pilots use the *CAP* in flight.

[34] And she added that the *CAP* arose from a process. Thus, fulfilling all the aspects of the common usage terms in Appendix "P".

VI. The employer's argument

[35] Counsel for the employer noted the revised wording of Appendix "P" and submitted that the grievor's work does not qualify as an aeronautical product.

[36] She cited the Board decision in *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 50, as authority for the proposition that adjudicators can only interpret the collective agreement. And they should not modify or add to it.

[37] She also noted that s. 229 of the *Act* specifically prohibits me from arriving at a decision by interpreting the collective agreement, which would effectively amend it, as noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117 at para. 34.

[38] Counsel for the employer distinguished *Lessard* on its facts as she noted that in that decision, at paragraph 40, the Board stated as follows for how the grievor in that case manufactured "raw materials" when he prepared petri dish gelatin for use in health and scientific laboratories and stated:

> *40 … The ingredients are the raw materials that are processed by means of a method, a process, a specific recipe. In my opinion, the process corresponds to a general concept of what is meant by a manufacturing process.…*

[39] Counsel also submitted that fundamental to the employer's case was the existence of a regulatory definition of "aeronautical product "in the *CARs*, which contrary to the grievor's view, she said I should follow.

[40] She cited Brown and Beatty in support of this submission, which states at paragraph 2:2110 ("Legislation as an aid to the interpretation and application of the agreement") as follows:

> *… It is generally accepted that an arbitrator may properly consider the meaning of a statute as an aid to interpretation of a collective agreement.…*
>
> *…*
>
> *… The existence of a statutory definition may give rise to a presumption that clear language will be required to override the same meaning being given to the same term in a collective agreement.*

[41] Continuing at paragraph 2:2120: Although it is not necessary for legislation to be incorporated into the collective agreement in order for an arbitrator to consider it, legislative provisions can be incorporated by reference into the collective agreement."

[42] Counsel also submitted scholarly publications and noted the well-established interpretation principles that the intent of the parties must be found, that parties are assumed to have meant what they said, and that the context in which words are located is critical to their meaning (see Brown and Beatty, at paragraph 4:2150).

[43] Counsel also submitted that when considering the meaning of words, I must take into account their meaning in the specific trade in which this matter is being considered.

[44] She cited Palmer and Snyder, *Collective Agreement Arbitration in Canada*, at page 288, and stated that this context may show that the words are not being used in the ordinary or common sense but rather that a special meaning might have been intended in the circumstances.

[45] In summary to her argument, counsel stated that the grievor's work entails preparing instrument landing instructions for pilots, which they may use to find a safe approach to land at an airport. She said that the *CARs* definition of "aeronautical product" applies and a plain reading of it, which states, "… aircraft, aircraft engine, aircraft propeller or aircraft appliance or part, or a component part of any of those things", does not include the grievor's landing instructions.

[46] Counsel also referred to the statutory definition of an "aeronautical product", at s. 3(1) of the *Aeronautics Act* (R.S.C., 1985, c. A-2), which states, "***aeronautical product*** means any aircraft, aircraft engine, aircraft propeller or aircraft appliance or part or the component parts of any of those things, including any computer system and software …" [emphasis in the original].

[47] Counsel suggested that I consider the amended version of Appendix "P" and Mr. White's testimony as evidence of the parties' intent to clarify and avoid another situation such as that in *Lessard*.

[48] I decline this invitation to inquire as to the intent of the parties as the wording of the text at issue is clear.

[49] Counsel also referred to the grievor's work description and suggested that it stands as evidence that the grievor's work does not include manufacturing.

[50] Specifically, she noted that the work description was focused on service activities and compliance duties, which are not related to manufacturing.

[51] She concluded by distinguishing *Lessard* on its facts and pointing out that it considered an outdated version of the collective agreement language that is central to this case, namely, interpreting "aeronautical manufacturing process."

[52] In her view, *Lessard* relied upon defining the manufacturing process as using raw materials, which the grievor in that case did when he mixed gelatin molds for petri dishes.

[53] She contrasted that with the grievor in this case, who submitted no such evidence that she used raw materials.

VII. The grievor's rebuttal

[54] The grievor's representative stated that while the Appendix "P" definition was amended, it was silent on the definition of an "aeronautical product" and that as in *Lessard*, I should interpret the phrase with its common and ordinary meaning, as was the approach in *Lessard*.

VIII. Reasons

[55] This case turns upon the definitions of "aeronautical product" and "manufacturing" and how I apply them to the facts of the grievor's work, which involves creating content for landing instructions in the CAP.

[56] The rules of collective agreement interpretation are summarized by Brown and Beatty in *Canada Labour Arbitration*, 5th Edition, at paragraph 4:2100:

> …
>
> *The modern Canadian approach to interpreting agreements (including collective agreements) and legislation is encompassed by the modern principle of interpretation which, for collective agreements, is:*
>
> > In the interpretation of collective agreements, their words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object and the intention of the parties.
>
> *And, 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 any event, when faced with a choice between two linguistically permissible interpretations, arbitrators have been guided by the purpose of the particular provision, the reasonableness of each possible interpretation, administrative feasibility, and whether one of the possible interpretations would give rise to anomalies.*

[57] The parties are both highly sophisticated in their ability to engage in collective bargaining, and their mature relationship spans many collective agreements over several decades.

[58] They both made a conscious choice to not create a defined term or terms in the collective agreement to cover the matters before me.

[59] The grievor was aware of the success in *Lessard* to interpret the clause at issue and sought to repeat that success in this case.

[60] The employer relied upon the new wording in the Appendix "P" in order to distinguish the *Lessard* decision from the present case.

[61] Given the decision of the parties not to negotiate the definitions of those key phrases, I believe it is only reasonable to rely upon the definitions provided in the Aeronautics *Act* and the *CARs,* as an aid to interpretation. I note the submissions of the employer to the effect that there is a presumption for adjudicators to consider regulatory and statutory definitions, as an aid to interpretation, when such are not provided in the agreement.

[62] I note the following passages in *Lessard*:

> …
>
> *11 Mr. Lessard's main duty as a technologist was to prepare the culture mediums by following the various recipes. As laboratory head, he was responsible for all the laboratory's activities including preparing standardized procedures, implementing monitoring and quality programs, maintaining and calibrating equipment and instruments, training employees, etc.*
>
> *12 Mr. Lessard acknowledged that he had no manufacturing process experience in the civil aviation field and that he had no experience in the aviation field before Transport Canada hired him.*
>
> …
>
> [Emphasis added]

[63] Mr. Lessard was found to be deserving of the terminable allowance for aircraft manufacturing inspections and regulatory compliance because, as the adjudicator indicated at paragraph 35 of the decision, the parties "used a common pattern to

establish the experience criteria for all listed groups, with the exception of civil aviation safety inspectors".

[64] The adjudicator was of the opinion that the parties "had set out a more general profile for that group of employees" in the collective agreement, meaning that the experience required could be general and not necessarily related to civil aviation.

[65] Furthermore, at paragraph 40 of the decision, the adjudicator determined that Mr. Lessard had the experience linked to a "manufacturing process":

> *… The ingredients are the raw materials that are processed by means of a method, a process, a specific recipe. In my opinion, the process corresponds to a general concept of what is meant by a manufacturing process…*

[66] The adjudicator in Lessard noted the risk of following the path of the "normal or ordinary" meaning of words to seek the intent of the parties when she noted the following:

> …
>
> *32 In settling the dispute, I must interpret the wording of Appendix "P" to ascertain the parties' intentions. In* Canadian Labour Arbitration*, authors Brown and Beatty clearly summarize the rules of interpretation that must guide an adjudicator who is called on to interpret the provisions of a collective agreement:*
>
> …
>
> 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 <u>that the language before them should be viewed in its normal or ordinary sense unless that would lead to some absurdity</u> or inconsistency with the rest of the collective agreement, or unless the context reveals that the words were used in some other sense….

…

[Emphasis added]

[67] I am neither bound by, nor can I agree with the result in *Lessard*. I find the outcome in it as it relates to approaching interpretation fits within the class of absurd outcomes that Brown and Beatty warn should cause one to pause and reconsider following a normal and ordinary analysis of the text at issue when faced with a highly technical and regulated workplace as it at issue here.

[68] I also distinguish *Lessard* from the matter before me because it was rendered under a different collective agreement. There is new wording in Appendix "P". The wording in the present case now specifically refers to "performance or supervision of aeronautical product manufacturing processes", which did not exist in *Lessard*.

[69] Furthermore, in the submissions of the parties which presented duelling dictionary definitions, I note that the grievor's own dictionary submission on the word "manufacturing" was not a good fit for her work.

[70] In her chosen dictionary usage of the word as cited previously, she noted it was defined in the fourth usage listed as, "manufacture; invent or fabricate" but that dictionary then continued to state, "(evidence or a story)"

[71] The grievor's representative did not mention this conclusion of the fourth definition from her chosen dictionary ("evidence or a story") in her submissions, but it is necessary to understand the context of the dictionary definition that she cited.

[72] Furthermore, in my reliance upon the regulatory and statutory definitions of the phrases at the heart of this grievance, which are used as an aid to interpretation, I find that the grievor's work of creating content for the CAP does not qualify as manufacturing.

[73] The *CARs* define the CAP as an "… aeronautical information publication published by NAV CANADA that contains information on instrument procedures …".

[74] The grievor's work is highly skilled and highly valued by our society, but it is not manufacturing.

[75] She is creating knowledge related to instrument procedures for landings, and other related duties as noted earlier in her testimony, which is then prepared by her employer to be offered as a service to aviators. This fact is captured in her work description that was presented in evidence.

[76] I do not accept the submission that the grievor was at work inventing landing instructions for pilots and was therefore engaged in manufacturing as a part of her work.

[77] For the reasons explained earlier in this decision, I conclude that the grievor failed to discharge her burden of adducing clear and compelling evidence upon which I can find on a balance of probabilities that she qualifies for the terminable allowance set out in Appendix "P" of the collective agreement.

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

(The Order appears on the next page)

IX. Order

[79] I order the grievance denied.

January 27, 2021.

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