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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

FRANÇOIS ROCHON AND CSABA MIKLOS

Grievors

and

**TREASURY BOARD
(Department of Foreign Affairs, Trade and Development)**

Employer

Indexed as

Rochon v. Treasury Board (Department of Foreign Affairs, Trade and Development)

In the matter of individual grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Yafa Jarrar, Public Service Alliance of Canada

For the Employer: Marylise Soporan, counsel

Heard via videoconference,
March 14 to 17 and April 29, 2022.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] At all material times, François Rochon and Csaba Miklos (“the grievors”) were employed by the Treasury Board (TB or “the employer”) as foreign service directive (FSD) program administrators in the Program and Administrative Services Group classified at the AS-01 group and level. They worked at the Department of Foreign Affairs, Trade and Development, referred to by the parties as Global Affairs Canada (GAC) in the Foreign Service Directive Bureau’s client centre, often referred to in the material by the acronym AES, at GAC’s National Headquarters in Ottawa, Ontario.

[2] At the time of the matters at issue in the grievances, the grievors’ terms and conditions of employment were partially governed by a collective agreement between the employer and the Public Service Alliance of Canada (“the union”) for the Program and Administrative Services Group that was signed on March 1, 2011, and that expired on June 20, 2014 (“the collective agreement”).

[3] On February 21, 2017, the grievors each filed a grievance that alleged that the employer had violated article 54 of the collective agreement, specifically that it had failed to provide each of them with a complete and current job description (“the work description grievances”). Clause 54.01 states as follows:

54.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position’s place in the organization.

54.01 Sur demande écrite, l’employé-e reçoit un exposé complet et courant de ses fonctions et responsabilités, y compris le niveau de classification du poste et, le cas échéant, la cote numérique attribuée par facteur à son poste, ainsi qu’un organigramme décrivant le classement de son poste dans l’organisation.

[4] As relief, both grievors requested corrective action, as follows:

...

I would like my job description updated to reflect the actual duties that I have been performing since the implementation of the FSD Portal on November 1st, 2013 including “the planning and conducting of internal financial audits” (TBS Financial Management FI Group Definition) and (TBS FI Group - Job

Evaluation Standard, Glossary of Terms) of Foreign Service Allowances.

I would like my position to be re-classified to the Financial Management Group level one (FI-01) with an effective date of November 1st, 2013.

As per Article 64.07 paragraph (a) of the Program and Administrative Services collective agreement and the Directive on Terms and Conditions of Employment (Appendix-Terms and Conditions of Employment, part 2, paragraph 6.1), I would like [sic] receive back dated and current acting pay for the periods that I have worked at my substantive position.

...

[5] On June 15, 2017, the grievors each filed a grievance that alleged that they were required to perform, from April 1, 2011, to May 30, 2016, the duties of a higher classification level and that as such, they are entitled under clause 64.07(a) of the collective agreement to acting pay for that period (“the acting pay grievances”). Clause 64.07(a) states as follows:

64.07 (a) *When an employee is required by the Employer to substantially perform the duties of a higher classification level in an acting capacity and performs those duties for at least three (3) consecutive working days or shifts, the employee shall be paid acting pay calculated from the date on which he or she commenced to act as if he or she had been appointed to that higher classification level for the period in which he or she acts.*

64.07 a) *Lorsque l'employé-e est tenu par l'Employeur d'exécuter à titre intérimaire une grande partie des fonctions d'un niveau de classification supérieur et qu'il ou elle exécute ces fonctions pendant au moins trois (3) jours de travail ou postes consécutifs, il ou elle touche, pendant la période d'intérim, une rémunération d'intérim calculée à compter de la date à laquelle il ou elle commence à remplir ces fonctions, comme s'il ou elle avait été nommé à ce niveau supérieur.*

[6] In the attachment to the acting pay grievances, the grievance details are set out as follows:

...

On May 25th, 2017 Csaba Miklos and Francois Rochon met with Mia Yen (Director General, FSD Services and Policy Bureau) as a [sic] part of a grievance concerning their job descriptions and the classification of their positions (FSD Program Administrators).

During this meeting, Mia Yen informed Csaba Miklos and Francois Rochon that the effective date of a newly proposed job description for their positions is May 30th, 2016. She explained that her

decision to select May 30th, 2016 as the effective date of the newly proposed job description was due to the fact that the key activities of requesting, analyzing and determining airfares for Non-Accountable Relocation Allowances (FSD 15.10.1) and approving stopovers (FSD 15.8.2) for cross-posting and other HQ city itineraries had ceased as duties that the FSD Program Administrators were required to perform as of this date.

In January and February of 2016 when Csaba Miklos had a series of informal discussions with Christella Girard (Director Foreign Service Directives Client Centre) about his job description and the classification of his position, Christella informed Csaba that the key activities of requesting, analyzing and determining airfares for Non-Accountable Relocation allowances and approving stopovers for cross-posting and other HQ city itineraries were included as a [sic] part of the overall key activity of calculating various allowances, benefits and entitlements for Government of Canada employees posted abroad.

After a grievance meeting with Mia Yen on May 25th, 2017, Csaba Miklos and Francois Rochon first became aware that the key activities of requesting, analyzing and determining airfares for Non-Accountable Relocation allowances and approving stopovers for cross-posting and other HQ city itineraries qualified them as substantially performing duties of a higher classification level in an acting capacity.

As per the methodology used in the Administrative Services Classification Standard, Csaba Miklos and Francois Rochon acted at the AS-03 level while they performed the key activities of requesting, analyzing and determining airfares for Non-Accountable Relocation allowances and approving stopovers for cross-posting itineraries in conjunction with their other assigned duties. They performed these key activities from April 1st 2011 through May 30th 2016.

Listed on the following pages is a classification analysis of the totality of the work Csaba Miklos and Francois Rochon were required to perform from April 1st 2011 to May 30th 2016. The methodology of the Administrative Services Classification Standard was used in this analysis.

...

[7] In the box on the grievance form that asks for the date on which the act, omission, or other matter giving rise to the acting pay grievances occurred, both grievors put May 25, 2017.

[8] 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

name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2) to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Summary of the evidence

[9] At the time of the hearing, neither grievor was working as a program administrator. Mr. Miklos left the position in 2018, and Mr. Rochon left it in February of 2020.

[10] At the time of the hearing, and since early 2017, Aline Taillefer-McLaren was the senior director for union engagement and National Joint Council support at the Treasury Board Secretariat. Between September of 2014 and January of 2017, she was either the deputy director, acting director, or director of the FSD Policy and Monitoring division.

[11] At the time of the hearing, Mylene Régimbald was the senior advisor in the Client Relations division of the FSD Bureau classified at the AS-05 group and level. She joined the FSD Bureau in 2006. From 2008 until 2014, she was an FSD client advisor classified at the AS-03 group and level; between May and September of 2014, she was in an acting FSD coordinator position classified at the AS-04 group and level in the client centre; from September of 2014 to April of 2016, she was the acting deputy director of the client centre classified at the AS-05 group and level; and finally, between April of 2016 and July of 2018, she was again in the FSD coordinator position (AS-04).

[12] At some of the times relevant to the facts involved in the grievances, Mia Yen was the director general of the FSD Bureau. She did not testify.

[13] At some of the times relevant to the facts involved in the grievances, Christella Girard was the director of the client centre. She did not testify.

[14] At the time of the grievances, Archie Campbell was a union steward and was sometimes involved with matters relating to the grievances. He did not testify.

[15] GAC was formerly known as the Department of Foreign Affairs and International Trade, and it is sometimes referred to in the documents filed at the hearing as “DFAIT”. As part of its mandate, it is responsible for sending and maintaining Canadian diplomats and staff to and in foreign countries. The staff are known as foreign service officers (FSOs).

[16] When FSOs are sent to foreign countries to work, there are rules that govern all aspects involved in moving them and their families to and from the foreign location (referred to in the material as “missions”), as well as certain benefits and entitlements that they receive while posted. These are set out in directives issued called “foreign service directives” or “FSDs”.

[17] Some FSDs provide for benefits or entitlements in the form of a monetary allowance payable to the FSO. These allowances are to allow FSOs and their families to be supported while abroad, and the values attributed to them vary, depending on many different factors, including the specific mission the FSO is posted to and their family situation. FSD program administrators, such as the grievors, are one set of employees involved in the process of evaluating and determining what each FSO is entitled to receive as part of a move to a mission, deployment at the mission, and either redeployment to a new mission or a move back to Canada. Ms. Taillefer-McLaren stated that there were 41 FSDs in effect at the time relevant to the grievances. She stated that there are significant differences contained in the FSDs within missions and across missions.

[18] Ms. Taillefer-McLaren testified that the FSD Bureau had two divisions: the client centre and the Policy and Monitoring division.

[19] The client centre is the operational arm, consisting of client advisors and program administrators who provide direct client services to FSOs. Client advisors are FSOs’ primary point of contact in the posting process; every FSO involved in a posting is provided with a client advisor. The client advisors analyze what is likely needed, required, and appropriate for the employee based on the employee, his or her family situation, and the posting itself. If complications or things that are unclear arise, they liaise with the FSD coordinators in the Policy and Monitoring division.

[20] The Policy and Monitoring division ensures that the FSDs are applied correctly. Ms. Taillefer-McLaren said that it is divided into two sections. The first is the policy

side that provides policy guidance and advice, and the second comprises largely of monitoring officers who monitor what is being expended and ensure that the information is input correctly.

[21] Ms. Régimbald stated that the client advisor duties are to handle the relocation of the FSOs to or from missions abroad. They administer the FSDs. They interview the employees and determine the configurations that apply to the moves and postings. They explain the FSDs and the allowances to the employees. She stated that of the 41 or so FSDs, the client advisors have to know all of them and have to work actively with about 20 of them.

[22] Ms. Taillefer-McLaren testified that the program administrators' work was specific to the allowances. From the evidence of Mr. Miklos, as well as Mses. Taillefer-McLaren and Régimbald, the program administrators dealt with the following FSDs at the time the grievances were filed:

- FSD 25 "Shelter Cost";
- FSD 55 "Post Living Allowance";
- FSD 56 "Foreign Service Incentive";
- FSD 56.11 "Post Specific Allowance"; and
- FSD 58 "Post Differential Allowance".

[23] In simplified terms, from what all of Messrs. Miklos and Rochon as well as Mses. Taillefer-McLaren and Régimbald said, when an employee was to be posted, they were entitled to receive certain allowances (money) depending on certain factors, such as the mission they were being posted to and what family was moving with them. These amounts would be limited to the period during which they were posted. Before, during, or after a posting, the amounts an employee was entitled to as set out in a particular FSD could change. This could be due to changes to the collective agreement or a change to the employee's position (such as an acting appointment). In addition, there were provisions that dealt with employees and their families travelling home during their postings or a family member leaving during a posting, such as a child returning to Canada to attend university. As well, there could be delays in submitting information, or errors in the submission, as well as delays and errors in the payments.

[24] Employees and their families potentially came from different places in Canada, and airfares and travel costs could vary, depending on any number of factors. Both grievors testified about having to deal with calculating allowances for airfares, or as

set out in their acting pay grievance, "... requesting, analyzing and determining airfares for Non-Accountable Relocation Allowances (FSD 15.10.1) and approving stopovers (FSD 15.8.2) for cross-posting and other HQ city itineraries ..." ("the airfare calculations"). They testified that originally, the airfare calculations were not part of their duties. Mr. Miklos testified that he started working as a program administrator in December of 2010 and that dealing with airfares started in April of 2011. He said that he believed that that work had been done by an FSD Coordinator (AS-04) at that time and that that person went on leave and that the grievors then started doing it. He said that it was part of their duties until May 30, 2016.

[25] The grievors testified that they believed that they were tasked with doing the airfare calculations because they had worked in the travel agency field before joining the employer and, as such, had a good background dealing with airlines and airfares. The grievors did not actually arrange the travel for FSOs and their families; they merely worked out what the allowance would be based on who was travelling from where and when and going to somewhere else. The allowance would then be provided to the FSO, who was responsible for making their own travel arrangements.

[26] Mr. Miklos testified that the bulk of the airfare calculations work was done between the beginning of April of any given year and the end of July of the same year. He said that when they (he and Mr. Rochon) were doing this work during those months, it accounted for about 70% of their work.

[27] Ms. Taillefer-McLaren was asked about the airfare calculations. She stated that duties with respect to airfare allowances overlap between different positions. She indicated that an AS-04 employee on the policy side is responsible for obtaining airfares from the federal government travel provider (HRG) and that calculations are made based on where the travel starts from and goes to. When she was asked about the volume of individual airfares required, she stated wholistically that at the time at issue, there were about 500 relocations per year and that the vast number of them were from a mission to Ottawa. Her estimate of more individual travel to other destinations was in the range of 50 to 75 times per year. She said that while an AS-04 did carry out this work, it was a very small part of their responsibilities. Their primary responsibility was to provide policy advice.

[28] In cross-examination, Ms. Régimbald was brought to Mr. Miklos' performance evaluation for the period from April 1, 2015, to March 31, 2016, and was asked about his work obtaining airfares. She stated that during this period, he was working as an AS-03. She confirmed that he did carry out work on airfares. When it was put to her that Ms. Taillefer-McLaren suggested that there were about 50 to 75 cases of more individual travel per year and was asked if that was accurate, she guessed that it could be anywhere in the range of 100 to 200 cases, depending on the year. Ms. Régimbald was asked how much time it would take to do this type of work with the airfare; her response was about 30 minutes to 1 hour per request.

[29] At a time that was not clear, a new, computerized software system to streamline the process involving the posting and return of employees and their families and the application of the FSDs was brought online, called the "FSD Portal" ("the portal"). Ms. Taillefer-McLaren stated that the portal was developed and brought online because at that point, they were using three different systems, which were old and were to be decommissioned. According to the grievors, it came online in November of 2014. Ms. Régimbald could not recall the year but said that it came online in the month of February. Mr. Miklos said that the introduction of the portal was a catalyst that led to the grievances due to the way it processed employee entitlements. He stated that it could not "backdate".

[30] Mr. Miklos testified that previously, information was input into a computer program and that the system made the calculation. He said that the portal did not have functional capability. He said that they had to extract data and figure it out manually using spreadsheets and applying the different rules based on the FSDs that were relevant to each FSO and their family and mission deployment at any given point in time.

[31] The exact details of how the portal did not work or did not always calculate the appropriate amounts of allowances and benefits is not germane to the issues that I must determine. Suffice it to say that the evidence disclosed that the allowances were organic. Their calculations and payments were often, if not always, in a state of flux. For example, the allowance or allowances related to travel to a particular mission from Canada depended on the starting city that an FSO was based in. If that city was Edmonton, Alberta, and a particular FSO was travelling with a spouse and two children, a certain amount would be calculated and paid. If at the last moment one of the

children did not travel and remained in Canada, the allowance had to be adjusted; or, if the FSO and family went to a particular mission and a child returned to Canada, say to go to university, an allowance would change. The evidence was that there would often be a lag in adjusting allowances and that sometimes, the portal could not make the adjustments.

[32] It was explained to me that due to difficulties with the way the portal worked, it led to a process that had to be carried out to verify and confirm that each FSO was provided with the appropriate allowances. This work, in essence, was reviewing information involved in any given FSO's posting and verifying that the amounts that were calculated and paid to the FSO were correct ("the allowance verification task"). The allowance verification task was carried out by the grievors, and Mr. Miklos said that after November 1, 2014, 70% of his work was doing this type of calculation with respect to individual FSOs. The grievors referred to this work as an audit function.

[33] During the cross-examination of Mr. Miklos, counsel for the employer produced a colour-coded Excel spreadsheet ("the spreadsheet"), which Mr. Miklos identified as a document he created as part of the allowance verification task. He explained how it worked. The example produced into evidence was for one specific FSO who had a posting period of seven years, which involved a total of three people and two cross-postings. The particulars of the employee or their family are not on the spreadsheet. The spreadsheet references five FSDs, which are identified by colours, and it is several pages long.

[34] Mr. Miklos said that on June 1 of every year, the TB publishes a new appendix to the FSDs. Salaries change, and there are adjustments to the different starting points with respect to the different allowances. The spreadsheet contains several pages of information and calculations that are made and integrated with one another to ensure that FSOs have received the appropriate entitlements per the FSDs.

[35] Ms. Taillefer-McLaren indicated that one of the reasons that the work involving airfare calculations was re-tasked to other employees, such as AS-03s or AS-04s, was that the program administrators were extremely busy with the allowance verification task.

[36] Mr. Miklos testified that relocating FSOs and their families largely took place in July, August, and September of each year. He said that there were roughly 1100 to

1200 relocations and that about 1/3 of them or about 400 did not take much work. He stated that there was nothing or very little that had to be verified or “audited”, as he described the allowance verification task.

[37] Ms. Régimbald stated that at some point, exactly when was unclear, but during the period that the grievors were working in their substantive program administrator positions, there were about 5000 allowance verifications that had to be done.

[38] On November 24, 2015, Mr. Miklos made a written request to reclassify the program administrator position from the AS-01 to the FI-01 group and level.

[39] Between February 7 and 20, 2017, Mr. Miklos and Ms. Girard exchanged the following emails, some of which were copied to Mr. Rochon:

[From Mr. Miklos, copied to Ms. Girard and Mr. Rochon, February 7, at 09:28:]

...

*Over the **past 12 months** there have been many changes to the duties that I perform. These new duties combined with the additional enhancements to the FSD Portal, changes on the procedure for requesting airfares and a weekly reporting requirement to management about the number of completed files, have made Francois and I uncertain as to what exactly are the assigned duties and responsibilities of our positions and management’s expectations towards our work.*

*To assist us with clarity about the duties and responsibilities of our positions, as per **article 54** of the Program and Administrative Services group - (AS, CM, CR, DA, IS, OE, PM, ST, WP), I’m formally requesting a **complete and current** statement of the duties and responsibilities of my position including the classification level and the point rating allotted by factor to my position, and an organization chart depicting the position’s place in the organization.*

...

[From Ms. Girard to Mr. Miklos, copied to Mr. Rochon, February 10, at 14:57:]

...

This request has been raised on numerous occasions over the past year, either to me, to Leslie Scanlon, AED’s former Director General, or more recently, to our actual DG, Mia Yen. However, our response remains the same as the one provided during our informal resolution session, in March 2016: AED intends to review all the Bureau’s positions with the strategic assistance of a Consultant, who will have the specific mandate to review the

structure of the Bureau, and of each specific position, by next fall. This consultant was scheduled to start the contract this fall but it has been postponed for reasons AED has already shared with the Team.

In the meantime, as indicated to you in great detail during our informal resolution meeting in March 2016, since the content of the AS01 Administrator's statement of duties has not changed significantly, and since it a generic work description, AED has decided to wait until next fall's review to modify it more accurately along with all other work descriptions in the Bureau.

...

[From Mr. Miklos to Ms. Girard, copied to Mr. Rochon, February 10, at 15:40:]

...

Last year on **January 8th 2016**, I made an initial request for a **complete and current** statement of the duties and responsibilities of my position including the classification level and the point rating allotted by factor to my position, **and** an organization chart depicting the position's place in the organization. I was presented with an incomplete and non-current statement of the duties and responsibilities of my position.

To be clear, the issue about the content and classification of my position has been informally discussed on multiple occasions last year but, up until February 7th 2017, the request for a **complete and current** statement of the duties and responsibilities of my position had only been made **once**. There has not been an independent "Job Validation Review" of the FSD Program Administrator positions, therefore you cannot say that the statement of the duties for these positions has not changes significantly.

In my email to Maria on **February 7th 2017** (more than a year after my initial request) I noted that "Over the past 12 months there have been many changes to the duties that I perform." Therefore I'm requested, again, a complete and current statement of the duties and responsibilities of my position including the classification level and the point rating allotted by factor to my position, and an organization chart depicting the position's place in the organization. The right for me to make this request is granted to under **article 54** of the collective agreement for the Program and Administrative Services group.

I'm fully aware of the bureau's tentative restructuring plans. These restructuring plans **do not** usurp my right to request a **complete and current** statement of the duties and responsibilities of my position, nor do they prevent you from complying with the collective agreement.

Are you refusing my request of February 7th 2017, to provide me with a **complete and current** statement of the duties and responsibilities of my position including the classification level and

the point rating allotted by factor to my position, and an organization chart depicting the position's place in the organization?

...

[From Ms. Girard to Mr. Miklos, February 20, at 16:53:]

...

Your request to get an updated statement of duties for your position has in fact been granted, as previously indicated. However, considering that a consultant has been hired to review all of the statements of work for the Bureau in a couple of months (starting this fall), the statement will be provided to you following that review. Doing the update of these statement of duties prior to fall would not be relevant as a number of responsibilities will be changed by that time, with the last phase of the portal which will be launched around that same time too.

...

[Sic throughout]

[Emphasis in the original]

[40] Mr. Miklos said that during discussions in 2016 that he had with Ms. Girard about the work description, he was provided with a work description for an FSD program administrator, classified at the AS-01 group and level, dated September 29, 2009 (“the 2009 work description”). The relevant portions state as follows:

...

Client Service Results - Résultats axés sur le service à la clientèle

Research, analysis, calculation of allowances, benefits and entitlements for Government of Canada employees posted abroad in accordance with the Foreign Service Directive (FSDs), and other program support, on behalf of the FSD Client Centre (AES), Department of Foreign Affairs and International Trade (DFAIT).*

**This includes employees and families of DFAIT and other government departments (OGDs) and agencies posted abroad on behalf of Canada (approximately 32 federal departments/agencies).*

Key Activities - Activités principales

Develops, recommends and implements approved processes, tools and templates governing the work.

Identifies information from numerous sources (e.g., FSDs, collective agreements, post indices, Statistics Canada data, special Treasury Board premiums), conducts research and analyses in order to initiate appropriate actions, and to calculate various allowances,

benefits and entitlements for Government of Canada employees posted abroad.

Upon receipt of Posting Confirmation Forms (PCFs), conducts analyses, identifies requirements and generates documentation appropriate to the family situation of Government of Canada employees posted abroad. Determines eligibility, calculates posting loans and other allowances, benefits and entitlements, and issues call-ups against standing offers for international moves, taking into consideration family circumstances.

As a result of maternity/parental leaves, promotions and other factors that impact salary, allowances, benefits and entitlements for Government of Canada employees posted abroad, conducts analyses, determines eligibility, and calculates adjustments.

Creates and updates transactions and payments in various systems (e.g., IMS, specialized posting loan system), and ensures data integrity. Develops reports for management, tailoring information to meet specific needs, and highlighting outstanding actions required for Government of Canada employees posted abroad.

Analyzes changes in FSDs, collective agreements, government and departmental legislation/regulations and policy affecting Government of Canada employees posted abroad, and determines their implications for individual employee situations, allowances, benefits and entitlements.

Conducts special projects, consults and acquires information from outside organizations (OGDs, moving companies), and provides information in response to enquiries from the Deputy Directors, FSD Client Advisors, bureau management, Mission administration and other AES clients. Participates on pilot projects related to re-engineering and program improvements, such as systems development/enhancement exercises.

Identifies recurring problems, trends and opportunities to streamline processes and enhance client services, and provides input to new/improved processes, tools, templates and systems.

...

[Emphasis in the original]

[41] Mr. Miklos said that the 2009 work description was missing several things, such as a position number, a code for the AS-01, the effective date, the supervisor, and the linguistic profile. He further said that it was missing a reference to the analysis of airfares (airfare calculations) and that he and Mr. Rochon felt that they were auditing as well as providing interpretations to client services.

[42] The work description grievances were filed on February 21, 2017.

[43] According to Mr. Miklos, during the grievance process for the work description grievances, sometime after the first-level response (May 19, 2017), the grievors were provided with a work description for a FSD program administrator, classified at the AS-01 group and level, with an effective date of May 30, 2016 (“the 2016 work description”), the relevant portions of which state as follows:

...

Client Service Results - Résultats axés sur le service à la clientèle

The provision of services to the FSD Client Advisors and management, on behalf of the FSD Client Centre (AES), Global Affairs Canada (GAC) in support of Government of Canada employees posted abroad. Services include: research, analysis, calculations and adjustments to allowances, benefits and entitlements paid to Government of Canada employees posted abroad, in accordance with the Foreign Service Directives (FSDs), as well as other program support.*

Provides advice on adjustment of allowances, benefits and entitlements paid to Government of Canada employees posted abroad to FSD Client Advisors and to management within the FSD Client Centre (AES), Department of Global Affairs Canada, from reception of Posting Confirmation Forms (PCFs) to departure of the employees at mission.

**This includes employees and families of GAC and other government departments (OGDs) and agencies posted abroad on behalf of Canada (approximately 16 federal departments/agencies).*

Key Activities - Activités principales

Identifies information from numerous sources (e.g., FSDs, collective agreements, post indices, Statistics Canada data, special Treasury Board Premiums, employee salary data, employee family configuration), conducts research and analyses in order to initiate appropriate actions and to calculate and to verify various allowances to ensure that they are accurate and comply with regulations, policies, etc., and to correct payments of various allowances, benefits and entitlements for Government of Canada employees posted abroad, based on the PCFs and clarifications from FSD Client Advisors and management.

Applies changes in FSDs, collective agreements, government and departmental legislation/regulations and policies affecting Government of Canada employees posted abroad, and determines their implications for individual employee situations, allowances, benefits and entitlements.

Determines eligibility, calculates and adjusts payments as a result of maternity/parental leaves, promotions and other factors that

impact salary, allowances, benefits and entitlements for Government of Canada employees posted abroad.

Creates and updates transactions and payments in various systems (e.g., FSD Portal, IMS) and ensures data integrity. Develops reports for management and for FSD Client Advisors, tailoring information to meet specific needs, and identifying actions related to allowances, benefits and entitlements paid to Government of Canada employees posted abroad to be undertaken by FSD Client Advisors and management.

As required, participates in special projects, consults and acquires information from outside organizations (e.g., OGDs, Phoenix pay centre), and provides information in response to enquiries from the Deputy Directors, FSD Client Advisors, bureau management, mission administration and other AES clients.

Develops [sic] recommends and implements approved processes, tools and templates governing the work.

Identifies recurring problems, trends and opportunities to streamline processes and enhance client services, and provides recommendations for new/improved processes, tools templates and systems.

...

[Emphasis in the original]

[44] Both grievors confirmed receipt of the 2016 work description by signing a copy of it on August 1, 2017. In his examination-in-chief, Mr. Miklos stated that the effective date, May 30, 2016, was the last date on which FSD program administrators were responsible for the activity of requesting, analyzing, and determining airfares for non-accountable relocation allowances and approving stopovers for cross-posting and other headquarters-city itineraries. Mr. Miklos further said that these tasks were given to someone in the Policy and Monitoring division who was classified at the AS-04 group and level.

[45] As part of the materials submitted in their brief of documents, the grievors included a document dated April 12, 2017, and entitled “Csaba Miklos’ and Francois Rochon’s Grievance Research Reference Document” (“the April 12 document”). At page 8, Mr. Miklos talks about a review carried out by a third-party consultant, stating as follows:

...

In January of 2016 Csaba Miklos hired [name withheld] of [firm name withheld] to review the incomplete job description that was provided to him. [Name withheld] concluded that the FSD Program

Administrator position was under classified [sic] and suggested that the position should at least be reclassified to an AS-03. He found similarities with the work that is being performed by the FSD Program Administrators to the work that is performed by the Audit Research Officer position at the Department of Fisheries and Oceans. Because he was not able to conduct a desk audit of the FSD Program Administrator position he was not fully able to see all of the financial work, therefore he was not in a position to verify if the FSD Program Administrator position qualified as an FI-01 position.

...

[46] Entered into evidence was an email dated May 30, 2017, from Mr. Miklos to Mr. Campbell (copying Mr. Rochon), which had attached a proposed revised work description for their positions. The relevant portion of the email stated as follows:

...

After extensive (and expensive) consultations with [names deleted] I have been provided with a revised proposed job description for our position. I have attached a copy of that revised job description along with this email. You will see the changes that have been made highlighted in yellow. Would you kindly please forward it to Tanya so she can discuss it with Mia. Francois and I will be firm on only accepting this version of the job description and we would like you to relay this to Tanya.

...

[47] Entered into evidence was a copy of the proposed revised work description for their positions referred to by Mr. Miklos in his May 30, 2017, email to Mr. Campbell, which was a version of the 2016 work description with amendments made to it by the consultant Mr. Miklos referred to in the email as well as the April 12 document (“the Miklos proposed work description”). It made some additions to parts of the 2016 work description; effectively, the reference to “audit” or “auditing” was added.

[48] In the Miklos proposed work description, under the heading “Key Activities”, the following minor additions, shown in bold, were made to the 2016 work description:

- In the first paragraph at the third line, where it reads “... conducts research and analyses in order to initiate appropriate actions ...”, the grievor added the words “plan and” after the word “to” and before the word “initiate”, so that part of the paragraph reads “... conducts research and analyses in order to **plan and** initiate appropriate actions ...” [emphasis added].

- In the first paragraph at the third and fourth lines, where it reads “... and to calculate and to verify various allowances ...”, the grievor added the words “audit the calculation of, and” after the word “to” and before the word “verify”, so that part of the paragraph reads “... and to calculate and to **audit the calculation of, and** verify various allowances ...” [emphasis added].

[49] The Miklos proposed work description also made additions to the wording contained in the 2016 work description, under the subheading “Skill”, in the first paragraph. For ease of reference, I have set out the 2016 work description without the additions and then the Miklos proposed work description with the additions set out in bold, as follows:

[The 2016 work description:]

Principles of general administration, research and analyses; of financial data administration, compensation and methods for calculated various allowances, benefits and entitlements; information management; methods for using a variety of software packages (work processing, databases, spreadsheets) and specialized departmental systems (e.g., FSD Portal, IMS); data integrity and report processes, tools and templates governing the work. This knowledge is required to identify information from numerous sources to determine eligibility of allowances, benefits and entitlements for Government of Canada employees posted abroad, taking into consideration family circumstances; to create and update transactions and payments in various systems (e.g. FSD Portal, IMS) and ensure data integrity; to develop reports for management, tailoring information to meet specific needs, and highlighting outstanding actions; to analyze changes in FSDs, collective agreements, government and departmental legislation/regulations and policy affecting Government of Canada employees posted abroad, and determine their implications for individual employee situations, allowances, benefits and entitlements; to participate in special and pilot projects related to re-engineering and program improvements such as systems development/enhancement exercises (e.g., FSD Portal); to identify recurring problems, trends and opportunities to streamline processes and enhance client services and to provide input to new/improved processes, tools, templates and systems.

...

[The Miklos proposed work description:]

*Principles of general administration, research and analyses; of financial data administration, compensation and methods for calculated various allowances, benefits and entitlements; **of generally accepted audit principles and practices of the Institute of Internal Auditors, and of the Treasury Board, for the verification of the accurate application of FSDs, regulations, terms of collective agreements in the calculation of allowances, benefits, and entitlements;** information*

*management; methods for using a variety of software packages (word processing, databases, spreadsheets) and specialized departmental systems (e.g., FSD Portal, IMS); data integrity and report processes, tools and templates governing the work. This knowledge is required to identify information from numerous sources to determine eligibility of allowances, benefits and entitlements for Government of Canada employees posted abroad, taking into consideration family circumstances; to create and update transactions and payments in various systems (e.g., FSD Portal, IMS) and ensure data integrity; to develop reports for management, tailoring information to meet specific needs, and highlighting outstanding actions; to analyze changes in FSDs, collective agreements, government and departmental legislation/regulations and policy affecting Government of Canada employees posted abroad, and determine their implications for individual employee situations, allowances, benefits and entitlements; to participate in special and pilot projects related to re-engineering and program improvements such as systems development/enhancement exercises (e.g., FSD Portal); **to conduct audits of the application of directives, regulations and collective agreements to the calculation of allowances, benefits and entitlements for Government of Canada employees posted abroad, to identify recurring problems, trends and opportunities to streamline processes and enhance client services and to provide input to new/improved processes, tools, templates and systems.***

[Emphasis added]

[50] In the third paragraph of the 2016 work description, still under the heading “Skill”, the Miklos proposed work description added some words. Again, for ease of reference, I have set out the 2016 work description without the additions and then the Miklos proposed work description with the additions set out in bold, as follows:

[The 2016 work description:]

Continuing knowledge is required of changes to the FSDs, collective agreements, government and departmental legislation/regulations and policy, post indices, Treasury Board premiums affecting compensation for Government of Canada employees posted abroad, gained through study of departmental and central agency directives in order to create and update transactions and payments in various systems (e.g., FSD Portal, IMS) and to develop reports for management to provide accurate FSD calculations.

...

[The Miklos proposed work description:]

*Continuing **study to maintain** knowledge **current** is required of changes to the FSDs, collective agreements, government and departmental legislation/regulations and policy, post indices, Treasury Board premiums affecting compensation for Government*

*of Canada employees posted abroad, gained through study of departmental and central agency directives in order to create and update transactions and payments in various systems (e.g., FSD Portal, IMS), **and a continuing study of processes, tools, templates and systems, to identify recurring problems and trends in the calculation of allowances, benefits and entitlements for Government of Canada employees posted abroad, and opportunities to streamline processes and produce more accurate FSD calculations and enhance client services, and to develop reports for management***

[Emphasis added]

[51] Finally, the Miklos proposed work description also made some additions to the wording contained under the subheading “Effort”. As in the previous two paragraphs, for ease of reference, I have set out the 2016 work description without the additions and then the Miklos proposed work description with the additions set out in bold, as follows:

[The 2016 work description:]

Initiative and judgement are required to analyze requirements, develop and recommend and implement approved processes, tools and templates in order to calculate initial and ongoing allowances, benefits and entitlements for Government of Canada employees posted abroad, and to initiate appropriate actions and documentation specific to family situations. Initiative and judgement are required to identify recurring problems, operational weaknesses and to recommend new/improved processes, tools, templates and systems to streamline processes and enhance client service.

...

[The Miklos proposed work description:]

*Initiative and judgement are required to analyze requirements, develop and recommend and implement approved processes, tools and templates in order to calculate initial and ongoing allowances, benefits and entitlements for Government of Canada employees posted abroad, and to initiate appropriate actions and documentation specific to family situations. Initiative and judgement are required **to apply generally accepted principles and practices of internal audit of the application of directives, policies, practices, and processes used in the calculation of allowances, benefits and entitlements for Government of Canada employees posted abroad,** to identify recurring problems, operational weaknesses and to recommend new/improved processes, tools, templates and systems to streamline processes and enhance client service.*

[Emphasis added]

[52] In the April 12 document, Mr. Miklos referred to the consultant that he had retained stating that the work that Mr. Miklos was doing as a program administrator was similar to the work that is performed by an audit research officer with the Department of Fisheries and Oceans (DFO) classified at the AS-03 group and level. Submitted as part of the grievors' brief of documents was a copy of a work description of that audit research officer ("the F&O audit officer work description"). It has a date of July 22, 2010, printed on the bottom left-hand corner of each page. However, it does not have on it an effective date; nor did anyone sign it, acknowledging it as an effective work description for any particular person or persons or specific position or positions. In addition, no supervisor signed it.

[53] Neither grievor testified about the F&O audit officer work description in their examinations-in-chief. No one from DFO testified about the F&O audit officer work description or the work that an audit research officer did. The consultant, referred to in the April 12 document and the email of May 30, 2017, did not testify.

[54] However, the F&O audit officer work description was shown to Mr. Miklos in cross-examination. He was brought to the "Skill" subheading, where it referred to work requiring knowledge of the "TB Internal Audit Policy Suite" and several other policies and directives involving auditing. He was asked if he was familiar with them, and he said that he was not sure. When it was put to him that he did not work with the "TB Internal Audit Policy Suite" or the other policies and directives referred to in the paragraph, such as the "Directive on Chief Audit Executives, Internal Audit Plans, and Support to the Comptroller General"; the "Directive on Departmental Audit Committees"; the "Directive on Small Departments and Agencies Audit Committee"; the "Guidelines on Expected Qualifications for Chief Audit Executives"; the "Guidelines on the Responsibilities of Chief Audit Executives"; and the "Internal Auditing Standards for the Government of Canada" ("the GOC Auditing Standards"), he agreed.

[55] Counsel for the employer produced to Mr. Miklos a copy of the GOC Auditing Standards that were in existence at the time of the work description grievances. The first paragraph of this document states that its purpose is "[t]o define the internal auditing standards to be met by all departments subject to the *Policy on Internal Audit*." Part 4 of GOC Auditing Standards is titled "Requirements", and paragraph 4.1.2 of it states as follows:

4.1.2 The Government of Canada has adopted the IIA [Institute of Internal Auditors] International Professional Practices Framework and departments are required to meet the IIA Standards in undertaking their internal auditing responsibilities, unless the Standards are in conflict with the Treasury Board Policy on Internal Audit or any related directives or standards in which case the Policy, directives or standards will prevail.

[56] Counsel for the employer put paragraph 4.1.2 to Mr. Miklos and confirmed with him that he did not work with these standards on a daily basis. He concurred.

[57] Section 4.2 of the GOC Auditing Standards is titled “Internal Auditing Standards for the Government of Canada”. Paragraph 4.2.1.1 states as follows:

4.2.1.1 Communication of results of internal audit engagements includes written reports. The final report shall be in written form. Internal audit reports must be posted on departmental web sites [sic], in a timely manner, in both official languages and must respect the Access to Information Act.

[58] Counsel for the employer also put paragraph 4.2.1.1 to Mr. Miklos and confirmed with him that he did not work with these standards daily. He concurred.

[59] Mr. Miklos testified that another key activity that the 2009 work description did not contain was that he and Mr. Rochon interpreted the FSDs with respect to allowances. He said that the client advisors would come to them for advice as to how the allowance amounts were calculated. The requests would be made by email or the advisors would simply come see them.

[60] A further key activity that Mr. Miklos stated was missing from the 2009 work description were the internal group discussions that would take place with respect to the application and administration of the FSDs relating to allowances. He stated that at staff and other meetings, there would be discussions with respect to the nuances of certain allowances.

[61] Mr. Miklos’s representative took him through his year-end performance evaluation for fiscal year 2015-2016 and identified his objectives set out in it, which he felt were not set out in the 2009 work description.

[62] In his examination-in-chief, Mr. Miklos was shown a copy of an undated client advisor work description. No employee signature was on the document; nor was it

signed by any supervisor. It was not identified by anyone as an accurate work description. Mr. Miklos was brought to the first key activity, which states “**Coordinates and ensures excellence in the delivery of FSD services to Government of Canada employees and their families assigned to missions ...** [emphasis in the original].” Mr. Miklos said that he did this from the first day he was with the client centre.

[63] Ms. Taillefer-McLaren was asked to explain the difference between a program administrator (AS-01) and a monitoring officer (AS-02). She stated that the program administrator work was specific to the allowances and, specifically, with respect to the allowance verification task, to ensure that what the portal authorized to be paid was accurate. It was specific to each individual FSO and dealt with whether FSO “X” was paid correctly and got what they were supposed to get. She said that the monitoring officers did not just deal with the allowance FSDs. They looked at the full spectrum of FSDs, where expenses could be made. They looked at the documentation, to verify it. The breadth of what the two positions do is different.

[64] Attached to and forming part of the acting pay grievances was a document titled “Classification Analysis for Acting Pay”. This analysis is three pages long, and as stated in the particulars of the grievance, it was an analysis done by the grievors based on the “Administrative Services Classification Standard”. In short, it sets out five classification criteria to be assessed and sets out what they believe are the point ratings that each should get based on their justification of the work they feel they do under each classification criteria. At the end of the analysis, their total point allocation comes to 324, which they state is comparable to an AS-03 classification, which is in the 321- to 400-point range.

[65] Between June 7 and September 16, 2011; October 15, 2013, and January 3, 2014; and February 17, 2014 and June 12, 2015, Mr. Miklos was in an acting FSD client advisor position classified at the AS-03 group and level. Between February 24 and November 11, 2016, he was in an acting monitoring officer position classified at the AS-02 group and level.

[66] Between March 17, 2014, and August 31, 2015, Mr. Rochon was in an acting monitoring officer position classified at the AS-02 group and level.

[67] Entered into evidence was a copy of an organizational chart of the client centre that showed the grievors' positions in the organization. I heard no evidence to suggest that it was not accurate.

[68] I did not hear any evidence whether the grievors received the point rating allotted by factor with respect to the 2016 work description.

III. Summary of the arguments

[69] With respect to the work description grievances, the grievors submitted that they carried out tasks that were not set out in the program administrator work description. These largely dealt with what the grievors believed was audit or auditing work.

[70] With respect to the acting pay grievances, the grievors submitted that between April of 2011 and May 30, 2016, they carried out the work of the airfare calculation. They submitted that the language of clause 64.07(a) is ambiguous and that it should be interpreted in its plain meaning. This means that "required" does not mean "requested". The grievors submitted that they spent 20% of their time doing this task, and therefore, as they were substantially doing the tasks of a higher classification level, they should have been paid at that level. They submitted further that while usually, the retroactivity of the grievance period would be 25 days, due to the ongoing discussions between the parties, the payment can be extended further back in time.

[71] The grievors referred me to Donald J.M. Brown and David M. Beatty, *Canadian Labour Arbitration*, 5th ed. ("*Brown and Beatty*"), chapter 8:2, "Equal Pay for Equal Work", and chapter 8:4, "Retroactivity", and to *Carter v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 89, *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20, *Currie v. Canada Revenue Agency*, 2008 PSLRB 69, *Sudbury Mine, Mill & Smelter Workers' Union and Falconbridge Nickel Mines Ltd.*, 1969 CarswellOnt 1088, *Abbott Laboratories Ltd. and United Steelworkers of America, Local 440*, 1995 CarswellOnt 5671, *Fairview Nursing Home Inc. Ltd. and London and District Service Workers Union, Local 220*, 1983 CarswellOnt 2501, and *Halifax (Regional Municipality) and I.A.F.F., Local 268*, 2001 CarswellNS 634.

[72] The employer submitted that the grievances should be denied.

[73] In addition, the employer submitted that the acting pay grievances are instead classification grievances, over which the Board has no jurisdiction.

[74] The employer referred me to the *Financial Administration Act* (R.S.C., 1985, c. F-11), the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35), and *Brown and Beatty*, paragraphs 2:22, “Temporal Limitations”, and 2:62, “Compliance with the Grievance Procedure - Time limits”, and to *Belliveau v. Treasury Board (Department of Agriculture and Agri-Food)*, 2013 PSLRB 69, *Bungay v. Treasury Board (Department of Public Works and Government Services)*, 2005 PSLRB 40, *Canada (Attorney General) v. Duval*, 2019 FCA 290, *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), *Charpentier v. Treasury Board (Environment Canada)*, PSSRB File Nos. 166-02-26197 and 26198 (19970131), *Cooper v. Canada Revenue Agency*, 2009 PSLRB 160, *Currie v. Treasury Board (Correctional Service of Canada)*, 2021 FPSLRB 102, *Doiron v. Treasury Board (Correctional Service of Canada)*, 2006 PSLRB 77, *Duffield v. Treasury Board (Department of Employment and Social Development)*, 2016 PSLREB 7, *Fong v. Canada Revenue Agency*, 2017 PSLREB 45, *Gvildys v. Treasury Board (Health Canada)*, 2002 PSSRB 86, *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69, *Jennings, Laqueux v. Treasury Board (Department of National Defence)*, 2012 PSLRB 80, *Lamy v. Treasury Board (Department of Public Works and Government Services)*, 2008 PSLRB 23, *Manuel v. Treasury Board (Department of Transport)*, 2012 PSLRB 9, *Suric v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 44, and *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145.

IV. Reasons

A. The work description grievances: Board file nos. 566-02-39141 and 39142

[75] The issue before me with respect to these grievances is whether the work description provided to the grievors was a complete and current statement of the duties and responsibilities of their positions. They bore the onus of proving that it was not.

[76] Clause 54.01 of the collective agreement was interpreted by me in *Belliveau* and more recently in *Currie 2021*. The reasoning in those cases applies equally here. This clause refers to a “complete and current statement of ... duties”. It is clear that the word “current” is meant to be read in conjunction with the first words of the clause,

“Upon written request”. As such, before embarking on a determination as to whether the tasks set out in the work description provided are complete, it is incumbent on me to address the meaning of the word “current”. The word “current” is not defined in the collective agreement. In *Belliveau* I referred to the *Canadian Oxford Dictionary, Second Edition* and indicated that the word “current” is defined as “belonging to the present time” and “happening now”, and that these phrases are fluid and can mean many different things, depending on the words and phrases that they modify or that modify them. It can mean right at this exact moment in time or the current hour, day, week, month, or even year.

[77] It is clear that the character of a job may have intrinsic to it any number of variables that may impact what “current” means. For example, hypothetically, someone may be asked to shovel snow as part of their job duties. In some parts of Canada, it would be done seasonally, and were that work location Ottawa and the job description was requested in June or July, it would be difficult to suggest that a job description that requires someone to shovel snow, if requested in July, would not be considered current, as the snow will eventually fall and have to be shovelled at some point during the year. “Current”, in that hypothetical context, would refer to over the course of the year.

[78] In addition, employees might be asked to carry out a function on the odd occasion. These are the proverbial “one-offs” not covered by their work descriptions, yet they have been asked to carry them out and have done so. However, this does not automatically require revising a work description. Employers can and often do ask employees to carry out a task that may or may not fall strictly within the duties set out in their work descriptions. But if the employee is not required or expected to do the duty regularly, the jurisprudence provides that it need not be set out in the job description. *Jennings*, at para. 52, states the following:

52 What is a complete and current statement of the duties and responsibilities of an employee? The parties and the arbitral authorities on which they rely agree that a work description must contain enough information to accurately reflect what the employee does. It must not omit a “... reference to a particular duty or responsibility which the employee is otherwise required to perform”; see Taylor v. Treasury Board (Revenue Canada — Customs & Excise), PSSRB File No. 166-02-20396 (19901221). A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement. In

Hughes v. Treasury Board of Canada (Natural Resources Canada), 2000 PSSRB 69, at para 26, the adjudicator wrote the following: “A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished.” See also Currie et al. v. Canada Revenue Agency, 2008 PSLRB 69, at para 164; Jaremy et al. v. Treasury Board (Revenue Canada - Customs, Excise & Taxation), 2000 PSSRB 59 at para 24; and Barnes et al. v. Canada Customs and Revenue Agency, 2003 PSSRB 13. The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and “... it is not the adjudicator’s role to correct the wording or the expressions that are used,” so long as they broadly describe the responsibilities and the duties being performed (see Jarvis et al. v. Treasury Board (Industry Canada), 2001 PSSRB 84, at para 95; and see Barnes, at para 24.

[79] I find that the term “current”, as set out in the collective agreement and in relation to these grievances, means the time frame in or about February of 2017, when Mr. Miklos formally made a written request of Ms. Girard. While it appears that many informal discussions were being carried out between the grievors and their supervisors, particularly during 2016, the written request for a statement of duties relative to the work description grievances filed on February 21, 2017, was made on February 7, 2017. The evidence of this is the email exchange between Mr. Miklos and Ms. Girard on that day, which was also copied to Mr. Rochon. In that email, Mr. Miklos stated that he was formally requesting a complete and current statement of the duties and responsibilities of his position, including the classification level and point rating allotted by factor to that position, and an organization chart depicting the position’s place in the organization. This is the exact wording found at clause 54.01 of the collective agreement.

[80] “Current” cannot mean dating back to, and including, all the time between November 2013 and the time of the grievance. This would be absurd as it would render useless the meaning of the word “current”. Clause 54.01 states that an employee may make a written request for a current statement of their duties. The grievors could have made their written request in November of 2013 and as such grieved that. It would have been incumbent on the employer to provide them with a statement of duties at that time, failing which they could have grieved its failure.

[81] In addition, in making his request in the February 7, 2017, email, Mr. Miklos also wrote as follows:

...

*Over the **past 12 months** there have been many changes to the duties that I perform. These new duties combined with the additional enhancements to the FSD Portal, changes on the procedure for requesting airfares and a weekly reporting requirement to management about the number of completed files, have made Francois and I uncertain as to what exactly are the assigned duties and responsibilities of our positions and management's expectations towards our work.*

...

[82] This part of the February 7 email discloses that it was the grievors' position that their duties had changed over the previous 12 months, that they had new duties, and that they were uncertain as to what their duties and responsibilities were.

[83] The evidence disclosed that during the course of the informal discussions that the grievors had in 2016, they were provided with the 2009 work description. However, they were not provided with a statement of duties, which they requested on or shortly after February 7, 2017. Insofar as this did not occur, the employer was in breach of the collective agreement.

[84] However, the evidence further disclosed that at some point between May 19, 2017, and August 1, 2017, the grievors were given the 2016 work description. It is clear from the evidence that the employer's position was that the 2016 work description accurately set out the duties and responsibilities of the program administrator position of which both grievors were incumbents.

[85] In the end, the question for me to answer is whether the 2016 work description is a reflection of the duties and responsibilities of the grievors such that it meets the requirement of clause 54.01 of the collective agreement. It is not the Board's function to write work descriptions; nor is it to wordsmith them to ensure that the best and most accurate wording is used to capture each and every task carried out by an employee in satisfying the requirements of a position at any given time. The question is also not whether the wording in a different or draft work description better describes the grievors' work but whether the one that the grievors were provided met the requirements set out in the collective agreement and the jurisprudence. The Board also does not have a classification function, which is another process outside its jurisdiction.

[86] The evidence disclosed that the grievors had received the 2016 work description, reviewed it, and been unsatisfied with it. They in turn produced the Miklos proposed work description, which they submitted to their union representative. They told him that they were firm that they would accept only that work description.

[87] In the summary of evidence portion of this decision, I set out the differences between the 2016 work description and the Miklos proposed work description. In short, the difference largely comes down to the grievors' belief that the duties they were performing as part of the allowance verification task were audit functions.

[88] The "Key Activities" sections of both the 2016 work description and the Miklos proposed work description set out what the actual duties are. The other sections indicate the skill level and effort required. Most of the additions proposed by the Miklos proposed work description were found under those subheadings. All the changes revolve around the suggestion that the duties and responsibilities were audit-related.

[89] In *Currie 2021* I referred to the *New World Dictionary of the American Language, Second College Edition*, which defines "Audit", as follows:

...

Audit...1. a formal, often periodic examination and checking of accounts or financial records to verify their correctness 2. a settlement or adjustment of accounts 3. an account thus examined and adjusted 4. a final statement of account by auditors 5. any thorough examination and evaluation of a problem.

...

[Emphasis in the original]

[90] Part of the evidence included the April 12 document. It contained a statement by the grievors referencing a consultant and his review of their work description and a suggestion that work set out in the F&O audit officer work description was similar to the work being carried out by the grievors in their program administrator positions. However, in cross-examination, Mr. Miklos was brought to several parts of the F&O audit officer work description and was tested on issues about the audit-type policies, directives, and processes required of someone as set out in the F&O audit officer work description. His answers were largely that he was not familiar with them. Counsel for

the employer also brought Mr. Miklos to the GOC Auditing Standards; he said that he did not work with them daily.

[91] The evidence before me disclosed that the grievors carried out a verification process with respect to FSOs' allowances and entitlements. An example of the work they carried out on the spreadsheet disclosed what they were doing. The spreadsheet, albeit with the name and personal identifiers deleted, was for a specific FSO and his family who had been posted from Canada, cross-posted between missions, and then returned to Canada. The FSO and his family were abroad for seven years. Mr. Miklos brought the hearing through the spreadsheet, which consisted of several pages and hundreds of lines of data and calculations and was that colour-coded to represent the five different allowances to which the FSO was entitled.

[92] I find that the work described by Mr. Miklos and as represented on the spreadsheet is accurately described under the heading "Key Activities" in the 2016 work description. The entire section describes in detail to me what the grievors were doing. It is true that the word "audit" or "auditing" is not used; however, this is nothing more than wordsmithing.

[93] I heard a large amount of evidence about the grievors' work involving airfares. The Miklos proposed work description contained nothing specific to that task. However, the evidence was that although the grievors had carried out that task at one point, they conceded that it was not work that they did after the end of May 2016. However, even if it was, the wording in the 2016 work description would be sufficient to cover it.

[94] The grievors also maintained that they interpreted the FSDs and provided advice to co-workers. This is covered in the 2016 work description in the "Key Activities" section, where it states that the incumbent "... consults and acquires information ... and provides information in response to enquiries from the Deputy Directors, FSD Client Advisors, bureau management, mission administration and other AES clients." It is also covered under "Identifies recurring problems, trends and opportunities to streamline processes and enhance client services, and provides recommendations for new/improved processes, tools templates and systems."

[95] As part of these grievances, the grievors asked as a remedy that if the duties that they were required to perform required a higher skill set than that of the current

classification of the work description that they be compensated at the higher classification level, backdated to when they first started acting at a higher classification level. The grievors filed separate acting pay grievances in May of 2017. I will address them separately in the next section of this decision. However, as far as the work description grievances are concerned, the Board has no jurisdiction with respect to classification, and as such, even if I had determined that the 2016 work description was not a complete and current statement of duties, I would have no jurisdiction to determine that the work carried out should be classified at a higher level and thus that the grievors should be paid at a higher level.

B. The acting pay grievances: Board File nos. 566-02-39143 and 39144

[96] Clause 64.07(a) of the collective agreement provides that when an employee is required by the employer to substantially perform the duties of a higher classification level in an acting capacity and does those duties for at least three consecutive days or shifts, they shall be paid acting pay at the higher level.

[97] The test is no different in this case than for any other case of an alleged breach of a collective agreement; the grievor and union must prove on a balance of probabilities that the breach occurred.

[98] It is the employer's position that the acting pay grievances are really about classification and as such are outside the Board's jurisdiction.

[99] As set out in *Fong*, the circumstances in which a claim may be made for acting pay under a collective agreement and those in which a reclassification is the appropriate outcome display certain similarities. In *Fong*, the Board aptly described the issues and differences as follows:

...

210 The circumstances in which a claim may be made for acting pay under the collective agreement and those in which a reclassification is the appropriate outcome display certain similarities. In both cases, employees claim that their work has not been valued properly and seek redress. In light of the similarities, it is not surprising that in a large number of cases, adjudicators have found it necessary to differentiate between the two.

211 For adjudicators, the distinction is particularly critical. If the issue is properly characterized as a claim for acting pay, the adjudicator may proceed to determine whether the claim is well founded; however, if the issue relates to classification, an

adjudicator lacks jurisdiction pursuant to section 7 of the PSLRA. The parties provided me with copies of many decisions in which these issues are discussed. Although I have not cited or referred to all of them in this decision, I have reviewed and considered them all, and I am grateful for being referred to them.

212 In Bungay, as was discussed, the adjudicator made an effort to capture some of the indicators that would suggest the issue is one of classification and therefore outside an adjudicator's jurisdiction such as:

- the claim for acting pay is an ongoing claim and not for a specified period;*
- the grievor has sought a reclassification, either informally or through a classification grievance;*
- the grievor continues to perform the duties he/she has always performed and only the classification levels in the workplace have changed; and*
- the acting pay grievance is based, in part, on a comparison with similar positions in other work areas.*

...

217 In Doiron v. Treasury Board (Correctional Service of Canada), 2006 PSLRB 77 at para. 97, another adjudicator tried to capture the essential differences between classification issues and acting pay issues in the following language:

[97] I add to this test [from Bungay] a commonsense [sic] appreciation of what lies behind the two types of grievances: in an acting pay case, the grievor's substantive position is normally presumed to be properly classified. The grievor argues that the employer has assigned extra duties for a specified period over and above those of the employee's substantive position, as outlined in the job description. These extra duties are associated with a higher level role. The grievor asserts, as a result, an entitlement to acting pay. In a classification case, by contrast, the grievor claims that the duties the employer requires on a continuing basis are undervalued. The grievor argues that an assessment of these duties against the relevant classification standard justifies upgrading the level of his substantive position within an occupational group (and/or changing the occupational group).

218 In my view, the common-sense distinction made in that quote captures important elements of the difference between classification issues and acting pay issues. On one hand, for acting pay, the employer requires that an employee undertake duties that are not required in his or her regular position but are associated with a higher-level position, and the period is limited during which the higher-level duties are to be carried out.

219 In the case of a classification issue, on the other hand, there is a systemic and continued undervaluing of the duties carried out by an employee on a regular basis, and that problem can be rectified only by permanently assigning a new value to the job.

220 The essential question raised by the employer's jurisdictional objection is whether the issue raised by the grievors has the characteristics that would make acting pay an appropriate remedy or whether instead it is an issue that would have to be resolved by considering whether the AU-04 large-file appeals officer positions should be reclassified.

...

[100] On November 24, 2015, Mr. Miklos made a request to reclassify the program administrator position from AS-01 to FI-01. On February 21, 2017, both grievors filed the work description grievances in which part of the relief they sought was to be paid acting pay back to the time when they first started working in their substantial positions. In the acting pay grievances, the grievors asked to receive acting pay backdated for the time from April 1, 2011, to May 30, 2016.

[101] The acting pay grievances are based exclusively on the work that the grievors carried out related to airfare calculations. The evidence brought forward on this was that when they were not doing this task, the tasks were part of the responsibilities of an unidentified employee whose position was classified at an unspecified higher level. Pre-April 2011, it was done by, the grievors believed, someone classified at the AS-04 group and level, and post-May 30, 2016, by client advisors, who were classified at the AS-03 group and level. Indeed, when he was in an acting client advisor position, Mr. Miklos did some of this work.

[102] Other than hearing that the grievors believed that someone in an AS-04 position had done this task as a part of their overall job responsibilities in the period before April 2011, I heard nothing else of the specific tasks and duties of the person who was in that AS-04 position. As for the time frame after May 30, 2016, the evidence in support of acting pay was that employees in client advisor positions did this task. Both Ms. Taillefer-McLaren and Ms. Régimbald concurred that Mr. Miklos did this work, or a part of this work, during fiscal year 2015-2016 when he was in an acting client advisor position and was being paid as a client advisor.

[103] However, the evidence of Ms. Taillefer-McLaren was that dealing with a portion of the airfare calculations was only one task that the client advisors (AS-03) carried

out. She testified that the client advisors are the primary point of contact for FSOs. Each FSO is provided with a client advisor who liaises with the FSO and the other people on the FSD delivery team, including program administrators, with respect to every aspect of the FSO's posting, cross-posting, and return to Canada. They were required to know about all the FSDs and worked with about 20 of them regularly. This was in contrast to the program administrators, whose duties dealt exclusively with the allowances.

[104] As set out in *Cooper*, at para. 41, job descriptions are not mutually exclusive; rather, unless otherwise stated, it can be expected that to allow the employer to manage its workforce, two or more classifications may overlap. The fact that a particular task may fall within the work description of a higher classification level does not in and of itself establish that when that work is done by someone in a position with a lower classification level, they are entitled to acting pay at the higher level. What the grievors established is only that at different points in time, the work involving the airfare calculations was part of the work duties of other employees who, when those other employees were doing them, they were incumbent to a higher-classified position. It did not establish that the grievors acted in those higher-level positions and substantially performed the duties of those positions.

[105] In *Bungay*, at para. 68, the adjudicator stated as follows:

[68] The test as to whether a grievor has been substantially performing the duties of a higher level has been articulated in a number of decisions of this Board. As stated in Beaulieu v. Treasury Board (Federal Court of Canada) (supra), the grievor does not need to demonstrate that he/she performed every job function in order to receive acting pay. Rather, the grievor must demonstrate that, in effect, he/she performed a significant portion of the duties of the higher classification.

[106] The grievors did not provide sufficient evidence to establish that carrying out the airfare calculations, which is one task that had been carried out by someone classified at the AS-04 level (pre-April 2011) and a client advisor classified at the AS-03 level (post-May 30, 2016), amounted to a substantial portion of the duties and responsibilities of those positions.

[107] Finally, with respect to the employer's position that the grievances are about classification, in *Doiron* at para. 111, the adjudicator stated the following with respect

to the suggested indicators to assist in determining whether the issue is one of classification:

[111] There is, however, no requirement that all of the indicators discussed in Bungay must be present to support a conclusion that classification comprises the real subject matter of a grievance. The individual indicators suggested in Bungay are neither necessary conditions nor, taken together, do they constitute an exhaustive or definitive list. They nevertheless do provide a helpful test. In the circumstances of this case, I am satisfied that the evidence, on balance, aligns well with the depiction of a classification grievance in Bungay.

[108] Based on all the evidence presented, I conclude that the way that the grievors brought forward both the work description grievances and acting pay grievances made it plain that that the acting pay grievances are in reality classification grievances. Indeed, the grievance forms set out three pages of the grievors' analysis and submit why the airfare calculations meet the point rating attributed to an AS-03 position. This is clearly a classification exercise as it does not even suggest doing the work of either a client advisor or someone in an unknown AS-04 position some 11 years before the hearing even took place. Accordingly, I find that I do not have jurisdiction.

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

(The Order appears on the next page)

V. Order

[110] The work description grievances in Board file nos. 566-02-39141 and 39142 are denied.

[111] The acting pay grievances in Board file nos. 566-02-39143 and 39144 are denied.

November 20, 2023.

**John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board**