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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

SHELLEY CUSHNIE

Grievor

and

**TREASURY BOARD
(Department of Transport)**

Employer

Indexed as
Cushnie 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: Pamela Sihota, Public Service Alliance of Canada

For the Employer: Raphael Domingo-Bah, counsel

Decided on the basis of written submissions,
filed November 27 and December 27, 2024, and January 13, 2025.

I. Facts

[1] Shelley Cushnie (“the grievor”) enjoyed a public service career with Transport Canada (“the employer”), first in an administrative position, and later, from 2002 to 2019, as a safety management system (SMS1) inspector at the TI-06 group and level.

[2] She grieved the employer’s refusal to pay her an annual terminable allowance that is defined in Appendix P of the relevant Technical Services (TC) collective agreement between the Treasury Board and the Public Service Alliance of Canada (“the bargaining agent”) that expired on June 21, 2014 (“the agreement”). The terminable allowance is defined as follows:

...

2. Employees in Transport Canada, Transport [sic] Safety Board, Public Works and Government Services Canada, Fisheries and Oceans Canada and Canadian Coast Guard who are incumbents of the TI-5 through T-8 levels in the following positions and who possess the listed qualifications shall be entitled to the Terminable Allowances as listed below:

...

*- rail investigators **and inspectors with qualifications in at least one of the following** disciplines: locomotive engineer, conductor, brake person, track specialist, rail traffic controller/dispatcher, equipment/car/locomotive inspector, mechanical officer, signal maintainer and operations officer, and with extensive operational experience in the railway industry or CANAC/FRA certification.*

...

[Emphasis added]

[3] During her tenure with the employer, the grievor completed training and gained experience. The employer paid for all the training she took, including a three-week course in July 2000 at what was then the Canadian National Railway’s (CN) CANAC training centre in Winnipeg, Manitoba.

[4] A locomotive engineer and a conductor facilitated the course, which included classroom instruction on the *Canadian Rail Operating Rules* (“CROR”) and practical field training. At the end of the course, the grievor had to pass a written exam and a signals test to obtain her CANAC certification. After she received it, she returned to the employer and worked with functional managers and inspectors to gain hands-on experience applying the CROR.

[5] In 2002, the grievor began working as an SMS1. At the times relevant to the grievance, until she retired in 2019, the grievor held that role. Despite receiving positive feedback from some of the employer's management staff, indicating that they thought that she might qualify for the terminable allowance, the grievor received a letter on January 17, 2017, which denied her request for it and included the following:

- a. She did not possess qualifications in at least one of the following disciplines: locomotive engineer, conductor, brake person, track specialist, rail traffic controller/dispatcher, equipment/car/locomotive inspector, mechanical officer, signal maintainer and operations officer (collectively, "the Disciplines").
- b. She did not possess extensive operational experience in the railway industry.
- c. Her CANAC/FRA certification was insufficient because she had not provided any details of the course and because it was only three-weeks [sic] long.

II. Summary of the submissions

A. For the bargaining agent

[6] The bargaining agent submits that the grievor met the first criteria of being an incumbent of a TI-06 position and that she met the requirement of possessing a valid CANAC/FRA certification. As a result, she was not required to hold a qualification in one of the disciplines set out in the letter or extensive operational experience in the railway industry to qualify for the terminable allowance.

[7] The bargaining agent submits that the agreement sets out that an employee must meet two of the following three requirements to be entitled to receive the terminable allowance, which is that they are an incumbent rail investigator or inspector classified TI-05 to TI-08 and that they meet one of the following:

- ...
- a. be qualified in at least one of the following: locomotive engineer, conductor, brake person, track specialist, rail traffic controller/dispatcher, equipment/car/locomotive inspector, mechanical officer, signal maintainer and operations officer and with extensive experience in the railway industry.*
 - or -*
 - b. Have CANAC/FRA certification.*
- ...

[8] The bargaining agent also stated:

The Bargaining Agent submits that to qualify for the Terminable Allowance, an employee must meet two of the following three requirements:

a. Be an incumbent at the TI-05 to 08 level working as a railway investigator or inspector.

b. Work as a rail investigator or inspector and be qualified in at least one of the following: locomotive engineer, conductor, brake person, track specialist, rail traffic controller/dispatcher, equipment/car/locomotive inspector, mechanical officer, signal maintainer and operations officer and with extensive experience in the railway industry.

-or-

c. Have CANAC/FRA certification.

...

[9] The bargaining agent submits that the agreement's language does not require meeting all three conditions to receive the terminable allowance. That is demonstrated by the inclusion of "or" in the list of qualifications that must be met. The bargaining agent submits that "or" implies exclusive alternatives in legal contexts, especially when conferring rights.

[10] Once an employee such as the grievor meets the first condition of being an incumbent railway inspector classified TI-05 to TI-08, the word "or" in the next paragraph creates these two distinct qualification paths for the position, according to the bargaining agent's submissions:

...

The first path requires candidates to have both of the following:

- Experience in at least one of the specified roles (e.g., locomotive engineer, conductor, etc.)*
- Extensive operational experience in the railway industry.*

The second path is CANAC/FRA certification, a standalone qualification alternative to the first option.

...

[11] The sentence structure clearly outlines two independent ways to qualify for the position: either meeting the first set of requirements (a specific role and operational experience) or holding CANAC/FRA certification.

[12] Historically, when it has been faced with two interpretations of a provision, the Board has considered the provision's intent, practicality, and reasonableness and whether either interpretation creates any inconsistencies. The preamble to Appendix P states this: "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."

[13] Thus, the purpose of the terminable allowance is to incentivize employees to remain at Transport Canada instead of seeking employment elsewhere. The allowance aims to retain employees with specialized skills. Allowing CANAC/FRA certification as an alternative to experience provides flexibility meeting qualifications, which is essential in fields in which employees have hands-on experience or are certified.

[14] The terminable allowance is intended to recognize and retain employees with specialized skills through hands-on experience or certification.

B. For the employer

[15] The bargaining agent's position is inconsistent with the agreement's clear language, as it misinterprets the sentence's clear grammatical structure. Treating certification as a standalone criterion lowers the threshold for eligibility and contradicts the requirements' intent, which emphasizes expertise in specific roles.

[16] The employer submits that the grievor meets only one of the specified requirements, which is being an incumbent rail investigator or inspector classified TI-05 to TI-08. She does not satisfy the other criteria, including possessing qualifications in one of the designated disciplines, extensive operational experience in the railway industry, or CANAC/FRA certification. Consequently, she falls short of meeting the cumulative requirements outlined in the agreement.

[17] The employer submits that to qualify for terminable allowance, an employee must meet the following requirements:

...

a. Be an incumbent at the TI-5 to TI-08 level as a rail investigator or inspector.

b. Have qualifications in at least one of the following disciplines: locomotive engineer, conductor, brake person, track specialist, rail traffic controller/dispatcher, equipment/car/locomotive inspector, mechanical officer, signal maintainer and operations officer.

and

*c. Have either extensive operational experience in the railway industry **or** CANAC/FRA certification.*

...

[Emphasis in the original]

[18] The agreement's language is clear. The phrase "... **and ... extensive operational experience in the railway industry or CANAC/FRA certification**" is connected to the earlier qualifications via the conjunction "and". That implies that qualifications in a listed discipline alone are insufficient. The grievor must also meet an additional requirement (the experience or the certification).

[19] The grievor provided a CANAC training certificate in the CROR. Her supervisor's email then states that the training was a three-week course that included field trips.

[20] The term "certification" is not explicitly defined in the agreement. However, based on the plain and ordinary meaning of the agreement's wording, it can be reasonably inferred that certification serves as an alternative to extensive operational experience in the railway industry. A three-week course is not deemed equivalent to extensive industry experience.

[21] The employer maintains that the grievor meets only the first requirement, as she held a TI-06 position as a regional SMS1.

[22] Even if the Board were to consider the grievor's CANAC certification as a valid CANAC certification, she would still fail to meet the cumulative requirements outlined in the agreement.

[23] The grievor meets only one of the outlined requirements, holding a TI-05 to TI-08 rail investigator or inspector position. However, she does not meet the additional criteria, such as qualification in one of the specified disciplines, extensive operational experience in the railway industry, or CANAC/FRA certification. As a result, she does not fulfil the cumulative requirements set out in the agreement.

III. Reasons

[24] The grievor's submissions as to the meaning of the terminable allowance criteria are not supported by the plain and obvious text and punctuation of the agreement.

[25] As the employer stated in its January 17, 2017, letter denying the grievor the allowance, rail investigators and inspectors who qualify for the allowance are required to be qualified in one of the listed disciplines.

[26] The evidence does not suggest that the grievor has such a qualification in one of the listed disciplines.

[27] As such, I need not make a finding on the contested matter of whether the grievor's July 2000 CANAC certificate met the criteria of her having a CANAC/FRA certification as stated in the agreement.

[28] The bargaining agent's many paragraphs of arguments as to how to interpret punctuation and to whom the agreement's terminable allowance clause should be read to include does not change the plain and obvious text of the agreement.

[29] Given my conclusion on the interpretation of the agreement and the evidentiary finding I have made, I must conclude that the grievor failed to introduce clear and compelling evidence upon which I could find that on a balance of probabilities, she discharged her burden of proof to substantiate her claim that she was denied an agreement benefit.

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

(The Order appears on the next page)

IV. Order

[31] The grievance is denied.

May 8, 2025.

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