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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

ACHILLE LEFORT, PAUL REDDY, KARINE COUSINEAU, AND TRINA STAPLETON

Grievors

and

TREASURY BOARD
(Royal Canadian Mounted Police)

Employer

Indexed as
Lefort v. Treasury Board (Royal Canadian Mounted Police)

In the matter of individual grievances referred to adjudication

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievors: Themselves

For the Employer: Aude Manzagol, analyst

Decided on the basis of written submissions, filed May 16 and June 7 and 14, 2024.

REASONS FOR DECISION

I. The employer's preliminary objection to the Board's jurisdiction

[1] This decision deals with the employer's preliminary objection to individual grievances filed by Paul Reddy, Achille Lefort, Trina Stapleton, and Karine Cousineau ("the grievors") under the Economics and Social Services (EC) group collective agreement that was effective July 31, 2019 ("the collective agreement").

[2] When they filed their grievances, each grievor occupied a public service human resources manager position classified at the PE-04 group and level in the Public Service Human Resources Section of the Royal Canadian Mounted Police (RCMP or "the employer"). Although they are grieving under the terms of the collective agreement, they are not represented by the bargaining agent because, as managers, they are excluded from representation.

[3] In their grievances, the grievors assert that the employer abused its authority by not exercising its discretion to reclassify their positions, resulting in a continuous violation of their terms and conditions of employment, in violation of article 1 of the collective agreement. They submit that those actions amounted to a demotion.

[4] In their submissions to the Board, the grievors included detailed grievance presentations to the employer which, amongst other things, argued that the generic PE-04 job description was not appropriate in their cases, that the employer had not considered all the relevant information in its classification decision and had failed to perform an external comparative analysis. Throughout the PE Generic review process, they remained classified at the PE-04 group and level, both before and after the reclassification exercise.

[5] In several places, the grievors argue in favour of the creation of an "additional layer" at the PE-05 group and level. While their arguments acknowledge that Article 1 of the collective agreement creates no rights, they do refer to an alleged violation of Article 6, the Management Rights article, outlining what they believe to be an abuse of authority during the classification process.

[6] The employer contends that the grievances could not have been referred to adjudication because they pertain to classification. None of them involve a demotion for unsatisfactory performance related to discipline or misconduct as defined in the

Financial Administration Act (R.S.C., 1985, c. F-11; "the *FAA*"). Furthermore, it submits that the demotion issue was not raised at all levels of the grievance process.

[7] Although the parties did not raise it in their submissions, the legal context of this matter is a preliminary objection to dismiss. As such, the grievors were required to establish a *prima facie* case that their grievances fell within the jurisdiction of the Board. This threshold is low but must still be met to proceed. In the present case, I find that even on this limited standard, the grievors have not established a *prima facie* case of demotion under the *FAA*.

[8] For the following reasons, the employer's objection to the jurisdiction of the Federal Public Sector Labour Relations and Employment Board ("the Board") is allowed. I find that the essential character of the grievances pertains to abuse of authority and fairness in the classification of their position description, a matter which is outside the Board's jurisdiction. The grievors have not met their burden to establish a *prima facie* case of demotion, and I therefore find that the Board has no jurisdiction to adjudicate these grievances.

II. Background

[9] Initially, the grievances were referred to adjudication under s. 209(1)(a) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; "the *Act*"), which deals with the interpretation or application of a provision of a collective agreement.

[10] The Board's Registry correctly informed the grievors that the grievances could not be processed because they did not have bargaining agent support, as required by the *Act*.

[11] The grievors then referred their grievances to adjudication under s. 209(1)(c)(i) of the *Act* and submitted that the employer's refusal to recognize and classify their duties at the PE-05 group and level before the PE Generic Review was done was a demotion.

III. Summary of the arguments

A. The employer maintains that the grievances involve classification issues

[12] The employer argues that the grievances could not have been referred to adjudication under s. 209(1)(c)(i) of the *Act* because they do not relate to a demotion

under s. 12(1)(d) of the *FAA* and do not pertain to unsatisfactory performance or any other reason that does not involve a breach of discipline or misconduct under s. 12(1)(e) of the *FAA*. Instead, they involve classification issues.

[13] The employer possesses the exclusive right to classify positions and employees within the public service; see s. 11.1(b) of the *FAA*. Therefore, the Board does not have jurisdiction over these grievances.

[14] Furthermore, the employer responds that at no time during the internal departmental grievance process was this argument brought forward. An employee can pursue an individual grievance to adjudication only if it was presented at all the levels of the grievance process. If a grievor introduces a new issue after completing the grievance process, as is so in this case, the *Burchill v. Attorney General of Canada*, [1981] 1 F.C. 109 (C.A.), interpretation asserts that the grievor did not properly present the new grievance at any level. Consequently, the failure to address the issue during the grievance process prevents any adjudication under s. 209(1) of the *Act*.

[15] On the merits of the grievances, in its final-level reply, the employer stated that the work duties, job validation reviews, and implementation of the PE Generics for the RCMP were all carried out in accordance with the relevant Treasury Board Secretariat policies involving classification and people management, which dictate that job validation reviews are required when a proposed reclassification occurs and that a better understanding of the job is required. Due diligence was exercised, and there is no indication that there was an abuse of authority on the part of the RCMP's Corporate Organization and Classification section or on its senior management's behalf.

[16] Finally, the employer requested that the references to adjudication be dismissed without a hearing.

B. The grievors maintain that they were demoted

[17] The grievors provide lengthy submissions in which they express strong sentiments of being treated inequitably and professionally disrespected. They allege that the mapping of their work descriptions at the PE-04 group and level was pre-determined, despite their manager's recognition that they were performing PE-05 duties. This amounted to a demotion because it prevented them from benefiting from

salary protection at the PE-05 group and level. They contend that that corresponds with the general definition of "demotion" under the *FAA*.

[18] Furthermore, the grievors raised an estoppel argument, as the result of alleged promises that they would be reclassified to PE-05.

[19] They agree that the authority with respect to classification is legally vested in the employer and is specifically excluded from the Board's jurisdiction. However, they claim that the true nature of their grievances centres on a loss of salary protection because of the employer's refusal to recognize that in fact they performed the work of a PE-05 human resources manager before their positions were classified PE-04. Had they been reclassified to PE-05 human resources managers, as their then-current manager recognized at the time, they would have benefited from salary protection at the PE-05 level when their positions were later mapped to the generic PE-04 classification.

[20] They claim that throughout the grievance process, they consistently argued that management's choice to not review positions individually before the PE Generic Review resulted in the denial of salary protection under the *Directive on Terms and Conditions of Employment*. They claim that the situation arose because the employer's classification section pushed for PE human resources manager positions in the East to be classified PE-04, despite that management confirmed that they performed PE-05 work.

[21] In summary, they request the following corrective measures:

> - The employer should not reclassify position number 00003332 into a generic PE-04 work description, as it is inappropriate for that role.
> - It should address and rectify the inconsistencies between position number 00003332 and other PE positions at the employer that perform similar duties and have similar responsibilities.
> - The grievors seek to be made whole, implying the restitution or correction of any negative impact that resulted from the employer's actions.

[22] The grievors submitted several cases in support of their position. Upon reviewing them in the context of the present grievances, the only case of relevance is *Cameron v. Deputy Head (Office of the Director of Public Prosecutions)*, 2015 PSLREB 98. While acknowledging that the Board's jurisdiction is derived from the *Act*, the grievors urge an interpretation of its provisions that ensures meaningful access to justice. They

therefore request that the employer's preliminary objection be dismissed and that their grievances proceed to a hearing on the merits.

IV. Analysis

A. The PE Generic Review - the loss of salary protection does not amount to a demotion

[23] As stated, the employer characterizes the grievances as involving classification matters not falling within the Board's jurisdiction. The grievors disagree and submit that their grievances pertain to a demotion resulting from the employer's refusal to reclassify them to PE-05 before the PE Generic Review was done.

[24] The parties do not dispute that the Board's authority is defined by the *Act*. To determine whether the grievances pertain to a demotion under s. 209(1)(c)(i) of the *Act*, I must determine their essential character by reviewing them and the grievors' submissions (also known as the "pith and substance" test).

[25] This approach was followed consistently in *Swan v. Canada Revenue Agency*, 2009 PSLRB 73; *Chamberlain v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 115 at para. 98; *Dansou v. Canada Revenue Agency*, 2020 FPSLREB 100; *Toth v. Treasury Board (Canada Border Services Agency)*, 2024 FPSLREB 108; and *Elsayed v. Canada Revenue Agency*, 2024 FPSLREB 130.

[26] On a review of the grievances and the grievors' arguments, I find that the essential character of the grievances indisputably involves classification matters, which are exclusive management rights and therefore specifically excluded from the Board's jurisdiction; see s. 7 of the *Act*. Although they claim a loss of salary protection, this alone does not meet the definition of "demotion" under the *FAA*.

[27] At their core, the grievances and all related submissions—including the grievance presentations and written arguments—assert that the grievors' positions should be classified at the PE-05 group and level rather than the generic PE-04 work description. The evidence they rely upon addresses issues such as the mapping of positions, the use of individual reviews in the classification process, the application of generic job descriptions, and the implementation approach. These elements are, in my view, indicative of a classification grievance. As such, I find that the grievances are, in pith and substance, matters of classification, over which I lack jurisdiction.

[28] As corrective measures, they request that the employer maintain the specific classification of position number 00003332 rather than reclassifying their jobs by using a generic PE-04 work description and that the employer resolve inconsistencies between that position and similar PE positions within the employer with respect to their duties and responsibilities. There is no mention in the grievances about demotion or loss of salary protection. The loss of salary protection was mentioned only at the grievors' second attempt to refer their grievances to adjudication.

[29] The grievors may claim that their grievances are not about classification, but they unequivocally are. The corrective measures that they seek clearly set out their request not to have their positions reclassified to PE-04. They refer to inconsistencies between the PE-04 generic work description and the work that they performed. Those matters involve the accuracy of their position descriptions and their corresponding classification. Unfortunately, the circumstances that they describe do not amount to a demotion under s. 209(1)(c)(i) of the *Act*.

[30] While the grievors' submissions alluded to significant salary-related consequences arising from the classification process, the allegation of a breach of the collective agreement's salary protection provisions only became explicit at a later stage. In any event, the loss of salary protection constitutes an issue of collective agreement interpretation and does not, in this case, amount to evidence of a demotion. Rather, the question of salary protection is a consequential effect of the grievors' arguments regarding classification and does not, in my view, represent the pith and substance of their grievances.

[31] In *Hare v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2019 FPSLREB 59, I determined that the grievor had been demoted unreasonably under s. 209 (1)(c)(i) of the *Act* following her transfer from an LA-2A to an EC-07 position because of the employer's failure to accommodate her during a pre-qualified pool process. In that case, I determined that I had to examine contextually the circumstances in which the alleged demotion occurred.

[32] Section 209(1)(c)(i) of the *Act* identifies a demotion as an action taken by the employer under s. 12(1)(d) of the *FAA* for unsatisfactory performance or under s. 12(1)(e) of that *Act* for any other reason that does not relate to a breach of discipline or misconduct. In this case, the grievors claim that their demotions were not related to

discipline, misconduct, or unsatisfactory performance. They claim that they were done for other, unrelated reasons.

[33] Section 12 of the *FAA* states the following with respect to demotion:

Powers of deputy heads in core public administration	***Pouvoirs des administrateurs généraux de l'administration publique centrale***
12 (1) *Subject to paragraphs 11.1(1)(f) and (g), every deputy head in the core public administration may, with respect to the portion for which he or she is deputy head,*	***12 (1)*** *Sous réserve des alinéas 11.1(1)f) et g), chaque administrateur général peut, à l'égard du secteur de l'administration publique centrale dont il est responsable :*
…	[…]
(d) *provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service whose performance, in the opinion of the deputy head, is unsatisfactory;*	***d)*** *prévoir le licenciement ou la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur de toute personne employée dans la fonction publique dans les cas où il est d'avis que son rendement est insuffisant;*
(e) *provide for the termination of employment, or the demotion to a position at a lower maximum rate of pay, of persons employed in the public service for reasons other than breaches of discipline or misconduct ….*	***e)*** *prévoir, pour des raisons autres qu'un manquement à la discipline ou une inconduite, le licenciement ou la rétrogradation à un poste situé dans une échelle de traitement comportant un plafond inférieur d'une personne employée dans la fonction publique;*
…	[…]

[34] It is well established that an inquiry into whether a demotion occurred is a factual exercise that examines the specific circumstances of a grievance, to determine whether the facts at issue meet the legislative meaning of "demotion", as described in ss. 12(1)(d) and (e) of the *FAA*.

[35] In *Hare*, I followed the same reasoning as in *Peters v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2007 PSLRB 7 at para. 264, as follows:

> *[264] … An adjudicator must take the fact that paragraph 92(1)(*b*) cross-references paragraph 11(2)(*g*) of the* FAA *as a binding*

> *indication that Parliament intended that the concept of demotion must, for purposes of determining an adjudicator's jurisdiction, relate to the exercise of authority pursuant to paragraph 11(2)*(g) *of the* FAA. *To the extent that jurisprudence interpreting the exercise of authority pursuant to paragraph 11(2)*(g) *of the* FAA *has defined what a demotion is, an adjudicator must apply the law accordingly.*

[36] Although *Peters* was decided under the *Public Service Staff Relations Act* (R.S.C., 1985, c. P-35) and the applicable *FAA* at the time, s. 209 of the *Act* and s. 12 of the *FAA*, dealing with demotion, remained the same in their essence. See paragraph 107 of *Hare*.

[37] In *Peters*, at para. 265, a demotion is defined as follows:

> *[265] As confirmed by the adjudicator in* Browne, *cited above by the employer, a demotion within the meaning of the* PSSRA *and the* FAA *to which it refers occurs where both an employee's classification and pay changes* [*sic*]. *An employee is demoted when she or he moves to, or is placed in, "… a position at a lower maximum rate of pay …." A demotion, therefore, requires there to have been a prior appointment to a higher-level classification for which the higher-level pay is an entitlement.*

[38] The jurisprudence from both the private sector and the Board is consistent as to the definition of "demotion", which includes a loss of salary, a loss of opportunity, a transfer to less-interesting work, and the risk of losing specialized skills. See *Robitaille v. Deputy Head (Department of Transport)*, 2010 PSLRB 70 at para. 226 (upheld on that point in 2011 FC 1218 at paras. 34 and 35); *Prince Foods Inc. v. U.F.C.W., Local 175* (2004), 131 L.A.C. (4th) 418; and *Good Humour-Breyers v. U.F.C.W.* (2004), 126 L.A.C. (4th) 423.

[39] In *Hare*, there was a significant loss of salary, there were diminished responsibilities, and there was no use of the skills and experience that the grievor successfully achieved in the career-advancement program (see paragraphs 208 and 211). Furthermore, the cause for the demotion in that case was that she failed to qualify for a pre-qualified pool on account of the employer's failure to provide her with a reasonable accommodation.

[40] Section 209(1)(c)(i) of the *Act* provides that an employee may refer to adjudication a grievance related to a demotion under s. 12(1)(e) of the *FAA* for any

other reason that does not relate to a breach of discipline or misconduct. Section 12(3) of the *FAA* provides that a demotion may only be for cause.

[41] In *Hare*, the employer agreed that there was no discipline or misconduct and no poor performance. It relied on that as its main argument against the Board's jurisdiction. In that case, the evidence established that the demotion was triggered by the grievor's graduation from the career-advancement program and her failure to pass the pre-qualified pool. I determined that that reason did not relate to a breach of discipline or misconduct. On that basis, I determined that the Board had jurisdiction and that the grievor was demoted within the meaning of ss. 209(1)(c)(i) of the *Act* and 12(1)(e) of the *FAA*. I concluded that her failure in the pre-qualified pool was discriminatory because of the employer's failure to accommodate her; therefore, the demotion was not done for a legitimate reason.

[42] The circumstances described in the grievances before me do not amount to a demotion. The grievances do not mention any allegations of facts that if proven, would justify me taking jurisdiction under s. 209(1)(c)(i) of the *Act* to hear these grievances as relating to a non-disciplinary demotion.

[43] The grievors may claim that their grievances are not about classification, but they unequivocally are. The corrective measures that they seek clearly set out their request not to have their positions reclassified to a PE-04. They refer to inconsistencies between the PE-04 generic work description and the work that they performed. Those matters involve the accuracy of their position descriptions and their corresponding classification. Unfortunately, the circumstances that they describe do not amount to a demotion but rather a failure to be granted a merited promotion.

[44] In their submissions, the grievors have urged the Board to extend its jurisdiction over management decisions under Article 6 to encompass matters of classification. However, I find that I have no such authority. The Board is a statutory tribunal, and its jurisdiction over classification matters has been expressly excluded. Accordingly, I must conclude that I am without jurisdiction in this case. The same reasoning applies to the grievors' arguments that the Board should assume jurisdiction on the basis of access to justice or estoppel. Even on the low threshold required at this preliminary stage, I find that the grievors have not met their burden to establish a

prima facie case of demotion. As such, the Board has no jurisdiction to proceed further.

[45] It is obvious that the grievors are not happy with the employer's changes to their duties, their job description or lack of one, their positions' level, and the employer's classification process. They may very well have legitimate concerns, but I cannot entertain them because those concerns are not included in the subject matters referred to in s. 209(1)(c)(i) of the *Act*. Therefore, I do not have jurisdiction and must uphold the employer's objection.

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

(The Order appears on the next page)

V. Order

[47] The employer's jurisdictional objection is allowed.

[48] The grievances are denied.

June 10, 2025.

Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board