Date: 20251003

File: 566-34-43268

Citation: 2025 FPSLREB 132

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

JULIE NIEBERGAL

Grievor

and

CANADA REVENUE AGENCY

Employer

Indexed as
Niebergal v. Canada Revenue Agency

In the matter of an individual grievance referred to adjudication

Before: Goretti Fukamusenge, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Chris Finding, Employment Relations Officer, Professional Institute of the Public Service of Canada

For the Employer: Calvin Hancock, counsel

Decided on the basis of written submissions, filed July 4 and 24 and August 21 and 31, 2023.

REASONS FOR DECISION

I. Introduction

[1] The grievor, Julie Niebergal, filed a grievance contesting a decision that her employer, the Canada Revenue Agency ("CRA" or "the employer"), made not to include her term employment for pay-increment purposes.

[2] At the relevant time, the grievor was a member of the AFS (Audit, Financial and Scientific - CRA) Group under the Audit classification (AU). She was represented by the Professional Institute of the Public Service of Canada ("the bargaining agent"). Her terms and conditions of employment were governed by two successive collective agreements — one signed on March 29, 2018, with an expiry date of December 21, 2018, and the other signed on August 23, 2019, with an expiry date of December 21, 2022. Since the disputed provisions in both collective agreements are similar, I will simply refer to them as "the collective agreement".

[3] The pay-increment criteria are set out in Appendix A of the collective agreement under "Pay Notes" 1, 2, and 3. When it applied Appendix A to the grievor's situation, the employer decided that her term employment did not count toward a pay increment. The question is whether the employer violated the collective agreement. I find that it did.

[4] According to Pay Notes 1 and 2, the pay-increment date for an AFS-AU employee is the anniversary date of their appointment, regardless of whether the appointment was a term or an indeterminate position or was a promotion. Further, I have determined that Pay Note 3, which pertains to the pay-increment period for acting assignments, is not relevant to the grievor's initial term employment.

[5] For quick reference, I have reproduced Pay Notes 1, 2, and 3, as follows:

…	[…]
*** APPENDIX "A"*	*ANNEXE « A »*
*** AU PAY NOTES*	*** AU – NOTES SUR LA RÉMUNÉRATION*
1. The pay increment period for full-time and part-time employees at the	*1. La période d'augmentation d'échelon de rémunération des employés à temps plein et à temps*

AU levels 1 to 6 is fifty-two (52) weeks.

partiel aux niveaux AU-1 à AU-6 est de cinquante-deux (52) semaines.

2. ***The pay increment date for an employee****, appointed on or after date of signing of this Agreement,* ***to a position in the AU classification upon promotion, demotion or from outside the public service, shall be the anniversary date of such appointment.*** *The anniversary date for an employee who was appointed to a position in the AU classification prior to the signing date of this Agreement remains unchanged.*

2. ***La date d'augmentation d'échelon de rémunération d'un employé*** *qui, à la suite d'une promotion ou d'une rétrogradation ou à son entrée dans la fonction publique, est* ***nommé à un poste de la classification AU*** *au moment de la signature de la présente convention collective, ou après cette date,* ***correspond à la date d'anniversaire de ladite nomination****. La date d'anniversaire pour un employé qui a été nommé à un poste de la classification AU, avant la date de la signature de la présente convention collective, demeure inchangée.*

…

[…]

Cumulative service for pay increment purposes in acting situations

Service cumulatif aux fins de l'augmentation de salaire dans le cas des affectations intérimaires

3. (a) An indeterminate employee who is required to act at a higher occupational group and level shall receive an increment at the higher group and level after having reached fifty-two (52) weeks of cumulative service at the same occupational group and level at the CRA.

3. (a) Un employé nommé pour une période indéterminée qui doit remplir les fonctions d'un groupe et d'un niveau professionnels plus élevés recevra une augmentation de traitement au groupe et au niveau professionnels plus élevés après avoir accumulé cinquante-deux (52) semaines de service cumulatif au même groupe et au même niveau professionnels à l'ARC.

(b) For the purpose of defining when an indeterminate employee will be entitled to go to the next salary increment of the acting position, "cumulative" means all periods of acting with the CRA at the same occupational group and level.

(b) Afin de déterminer le moment où un employé nommé pour une période indéterminée sera admissible au prochain échelon de salaire du poste intérimaire, « cumulatif » s'entend de toutes les périodes intérimaires à l'ARC, au même groupe et au même niveau professionnels.

…

[…]

[Emphasis added]

II. Hearing procedure: written submissions by consent

[6] Under s. 22 of the *Federal Public Sector Labour and Employment Board Act* (S.C. 2013, c. 40, s. 365), and with the parties' agreement, this grievance was decided based solely on the written submissions. The Federal Public Sector Labour Relations and Employment Board ("the Board") has the authority to decide any matter before it without holding an oral hearing.

III. Background

[7] The facts in this matter are not in dispute. The parties have jointly submitted an agreed statement of facts, the relevant portions of which are summarized below.

[8] On October 1, 2018, the grievor received a six-month term appointment with the CRA as an income tax auditor, classified at the AU-01 group and level. The term was scheduled to end on March 29, 2019. However, on February 25, 2019, about a month before then, she was appointed to an indeterminate SP-05 income tax auditor position. At the same time, she was appointed to an acting AU-01 income tax auditor position.

[9] On August 26, 2019, the grievor was appointed to an indeterminate AU-01 income tax auditor position.

[10] The parties agree that for calculating the grievor's pay rate, her SP-05 indeterminate appointment was a "transfer by appointment" because its maximum rate was less than that of the term AU-01 position. They also agree that the AU-01 acting appointment was a promotion because its maximum pay rate exceeded that of the SP-05 position by an amount equal to at least the lowest pay increment for the AU-01 acting position.

[11] The parties acknowledge that the grievor's pay rates in her indeterminate SP-05 and acting roles were calculated correctly, in accordance with the Treasury Board's *Directive on Terms and Conditions of Employment* (TCOE) and the collective agreement.

[12] When it calculated the grievor's pay-increment periods, the employer decided that she would receive one on February 25, 2020 — her one-year anniversary — after February 25, 2019, the day on which she was appointed to the indeterminate SP-05 and acting AU-01 positions.

IV. Summary of the relevant arguments

A. For the grievor

[13] The bargaining agent submits that the grievor started working for the employer as an AU-01 on a 6-month term appointment. Approximately 4.5 months into it, she was appointed to the indeterminate SP-05 and the acting AU-01 positions. Approximately 11 months into her employment, she was appointed to the indeterminate AU-01 position.

[14] According to the bargaining agent, the parties' fundamental disagreement is that the grievor believes that she was entitled to a pay increment after she worked continuously for 52 weeks as an AU-01, while the employer asserts that her AU-01 term employment did not count toward the calculation of her pay increment.

[15] The bargaining agent explains that the Pay Notes provide a roadmap for how pay increments are administered under the collective agreement. Pay Note 1 sets out the pay-increment period and the categories of employees entitled to pay increments. Pay Note 2 sets the anniversary date on which a pay increment becomes payable. Pay Note 3 sets the conditions under which an indeterminate employee who is acting at a higher occupational group and level is entitled to their next pay increment.

[16] The bargaining agent submits that the grievor was not an acting employee on October 1, 2019, and as such, Pay Note 3 did not apply to her on that date, which was when she became entitled to a pay increment.

[17] The bargaining agent argues that the employer's interpretation of the Pay Notes provisions would result in all employees, including indeterminate employees, who were not in acting positions being excluded from receiving a pay increment after 52 weeks of work.

[18] The bargaining agent maintains that the language in Pay Notes 1 and 2 continues to apply to full-time and part-time employees who are not indeterminate employees in acting positions. It follows that full-time indeterminate and term employees who are not acting are entitled to the pay increments set out in those pay notes.

[19] The employer is attempting to manufacture a meaning within in the AU Pay Notes that does not exist. It interprets Pay Notes 2 and 3 as fettering the entitlement set out in Pay Note 1 rather than broadening it.

[20] Pay Note 2 establishes that the anniversary date for calculating pay increments is not impacted by whether it occurs before or after the collective agreement is signed. Pay Note 3 establishes that time spent acting at a higher group or level counts for pay increments. Pay Notes 2 and 3 are not limiting provisions; they are, when read plainly, expanding provisions that broaden Pay Note 1's applicability.

B. For the employer

[21] The issue before the Board is whether the grievor was entitled to receive her pay increment on October 1, 2019 (i.e., the 1-year anniversary of her employment and her term AU-01 position), rather than on February 24, 2020 (i.e., 52 weeks from the start of her acting AU-01 appointment after she was appointed to her indeterminate SP-05 position).

[22] In the employer's submission, the answer is clearly "No". It correctly calculated the grievor's pay increment in accordance with the collective agreement, the AU Pay Notes, and the TCOE.

[23] The employer explains that the bargaining agent's position is based on the assertion that the grievor should have received an additional pay increment on the one-year anniversary of her employment. However, the employer argues that she had already received two pay increments within her first year following her promotion and therefore was not entitled to another increment at that time.

[24] The employer argues that the bargaining agent's position is inconsistent with the collective agreement's clear language and overall scheme and that it would require the Board to ignore certain provisions of the AU Pay Notes. The bargaining agent's position would also result in adding a monetary benefit to the collective agreement that the parties did not bargain for. The bargaining agent requests that the Board amend the collective agreement, which would contravene s. 229 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; *FPSLRA*).

[25] The parties agree that the grievor's pay rates in her indeterminate SP-05, the acting and indeterminate AU-01 roles were calculated correctly in accordance with the TCOE and the collective agreement.

[26] In accordance with the collective agreement and the TCOE, the employer determined that the grievor would receive her pay increment on February 24, 2020 (i.e., 52 weeks from the start of her acting AU-01 position, after she was appointed to the indeterminate SP-05 position).

[27] The employer draws my attention to the Board's jurisprudence and argues that the Board has repeatedly recognized that when a collective agreement's language is clear, it must be applied, even if the result may seem unfair. To support this argument, the employer cites *Forbes v. Treasury Board (Correctional Service of Canada*), 2021 FPSLREB 110 at para. 44.

[28] The bargaining agent has the onus of proving that on the balance of probabilities, the employer contravened the collective agreement. Additionally, when the bargaining agent asserts a right to a monetary benefit, it carries the burden of demonstrating that the collective agreement has precise language that obligates the employer to pay the benefit in question.

[29] The bargaining agent did not meet its onus. Accordingly, the grievance should be denied.

[30] The bargaining agent argues that the grievor, who worked as an AU-01 full-time from the day on which she was appointed to the position on October 1, 2018, for 52 weeks, was entitled to a pay increment on the anniversary date of her appointment, which was October 1, 2019.

[31] The basis for that argument appears to be the text of Pay Note 1, which provides that "[t]he pay increment period for full-time and part-time employees at the AU levels 1 to 6 is fifty-two (52) weeks." The bargaining agent argues that on a strict reading of that provision, the grievor should have received her next pay increment on the one-year anniversary of her initial appointment. That interpretation would require the Board to ignore her employment situation, as well as the impact Pay Notes 2 and 3.

[32] Pay Note requires and directs the employer to consider "**[c]umulative service for pay increment purposes in acting situations**" [emphasis in the original]. Pay Note

3(a) provides that "[a]n indeterminate employee who is required to act at a higher occupational group and level shall receive an increment at the higher group and level after having reached fifty-two (52) weeks of cumulative service …", and Pay Note 3(b) defines "cumulative" as "… all periods of acting with the CRA at the same occupational group and level."

[33] Effective February 25, 2019, the grievor was appointed to the indeterminate SP-05 position and was required to act in the AU-01 position (i.e., at a higher group and level than her substantive SP-05 position). The acting appointment was a promotion for the purpose of calculating her pay rate. As such, during the acting period and through the TCOE's application, her pay rate was at the AU-01 increment level 3.39, which was two pay-increment levels higher than her initial pay rate as a term AU-01 less than a year earlier.

[34] Had the grievor continued to act in the AU-01 position without interruption, she would have received her next pay increment (to AU-01 increment level 4) on February 24, 2020, through the application of Pay Notes 2 and 3 (i.e., 52 weeks from the start of her acting AU-01 appointment after she was appointed to the indeterminate SP-05 position).

[35] However, the grievor received a promotion on August 26, 2019, on her indeterminate appointment to the AU-01 position from her previous substantive indeterminate SP-05 position. As a result of the promotion and her previous AU-01 acting appointment, through the TCOE's application, her pay rate was confirmed as AU-01 increment level 3.41. That was two pay-increment levels higher than her initial pay rate as a term AU-01 less than a year earlier.

[36] In other words, since the grievor was appointed indeterminately to the AU-01 position without a break in service from her acting appointment, she was entitled to keep the same salary and pay-increment period that she had been entitled to during the acting AU-01 appointment.

[37] Considering the grievor's unique employment situation and applying the AU Pay Notes provisions coherently along with the TCOE, the employer determined that she would receive her next pay increment (to AU-01 increment level 4) on February 24, 2020 — i.e., 52 weeks from the start of her acting AU-01 position.

[38] Citing *Forbes* at para. 67, the employer urges me to be cautious not to add benefits to the collective agreement that the parties did not bargain for. It emphasizes that Parliament enacted such a restraint in s. 229 of the *FPSLRA* which prohibits adjudicators from rendering decisions that would alter a collective agreement's terms.

V. Reasons

1. The issue

[39] The issue in this grievance is whether the employer was required to consider the grievor's term service when setting her pay increment date. Such consideration was required.

[40] On October 1, 2018, the grievor was appointed to a six-month term position as an income tax auditor, classified at the AU-01 group and level. The term was scheduled to end on March 29, 2019. However, on February 25, 2019, the grievor was appointed to an indeterminate SP-05 position and, at the same time, appointed to an acting AU-01 role. A few months later, on August 26, 2019, she was appointed substantively to the AU-01 position.

[41] On November 26, 2019, the grievor filed a grievance following the employer's refusal to grant her a pay increment after her promotion to the indeterminate AU-01 position in August 2019. She alleged that she had not been paid correctly since October 2019, citing Pay Note 3, which addresses cumulative service in acting positions. The grievor further claimed that the employer misapplied the pay provisions applicable to term employees. For greater clarity, a relevant excerpt from the grievance is reproduced below.

…

> *"I have not been paid the correct salary since October 1, 2019. Article 44 and the Pay Notes of the PIPSC-AFS Collective Agreement have not been applied correctly by the CCSC. In addition, it is clear that CCSC is not following Compensation E-Communique 2017-03 to reflect cumulative service' that is now in the CA since June of 2012. Specifically Pay Note 3(a) and (b) of Appendix A for AU's in the CA entitles me to an increment after 52 weeks of cumulative service. It is also apparent that CRA is not applying the TCOE correctly in regard to terms/acting/perm."*
>
> *As corrective action, the Grievor requested the following:*
>
> *"that I be made whole in all respects, and, in particular, that:*

> *(1) I be paid $67,076 (level 4 of the AU-01 pay scale revised to $68,966 per new contract signed August 23, 2019) commencing October 1, 2019 (or earlier depending on the actual 52 week period) as specified in the CA and pay notes.*
>
> *(2) My increment date for AU-01 be corrected to October 1, 2019 (or 52 weeks from October 1, 2018, each year), and future years, and*
>
> *(3) Any other corrective action...*

[42] The employer's replies focus only on the grievor's initial term position, asserting that the time spent in that role does not count toward cumulative service as an indeterminate acting AU-01, because the grievor was not acting at that level during the term. The employer argues that Pay Notes 3(a) and (b) require it to consider only acting time at a higher group and level when determining eligibility for pay increments. For example, the employer's third and the final level replies to the grievance include the following:

> …
>
> … ***Your time spent as a determinate substantive AU-01 did not count towards your cumulative service as an indeterminate acting AU-01 because you were not previously acting at the AU-01 level; rather, it was your substantive level prior to your indeterminate appointment on February 25, 2019.***
>
> …
>
> *… AU Pay Note 3. a. in Article 44 – Pay Administration, of the PIPSC collective agreement. The language in the PIPSC collective agreement (Pay Note 3.a.) specifies that only time as an indeterminate employee who is required to act at a higher occupational group and level shall receive an increment at the higher group and level after having reached fifty-two (52) weeks of cumulative service at the same occupational group and level at the CRA.* ***Your time prior to February 25, 2019, was as a determinate AU-1, which does not count as cumulative service towards the required accumulated 52 weeks as you were neither acting nor*** *and [sic]* ***indeterminate employee.***
>
> [Emphasis added]

[43] Pay increments for the AU bargaining unit are governed by Pay Notes 1, 2, and 3. Pay Notes 1 and 2, read together, provide that such pay increments are to be paid to the bargaining unit's members 52 weeks after they are appointed to a position in the unit.

2. General principles of collective agreement interpretation

[44] The law in this area is settled. There are numerous cases and doctrines which have articulated the general principles of interpretation. Those principles require that the words of a collective agreement be read in their entire context, in their grammatical and ordinary sense, and harmoniously with the scheme of the agreement, its object, and the parties' intention (see for example, *Cruceru v. Treasury Board (Department of Justice)*, 2021 FPSLREB 30 at para. 84; *Duhamel v. Canadian Food Inspection Agency*, 2022 FPSLREB 87 at paras. 58 to 62; and *Canada (Attorney General) v. Delios*, 2014 FC 1042, at para. 48).

[45] In addition, the interpretation must not lead to amending the collective agreement. That limitation is codified in s. 229 of the *FPSLRA* and is a well established principle in the Board's jurisprudence (see for example, *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 50).

[46] Although the parties agree on the underlying principles, they differ in their interpretation of Pay Notes 1, 2, and 3 as they apply to the grievor's circumstances. Citing Brown and Beatty, *Canadian Labour Arbitration*, 5th Edition, at 4.21, the bargaining agent argues that the AU Pay Notes are unambiguous and therefore must be interpreted according to the words of the agreement. Similarly, referencing *Cruceru*, the employer maintains that the collective agreement's language is clear and unambiguous, it must be applied even if the result may seem unfair. Given that each party applies the relevant provisions differently, the central issue becomes one of interpreting their mutual agreement.

[47] Having considered the above interpretation principles, I find the grievor's submissions to be well-founded. Pay Notes 1 and 2 are the provisions most relevant to the grievor's circumstances.

[48] In this case, a textual interpretation of Pay Notes 1, 2, and 3 leads to the conclusion that Pay Note 3 does not apply to the grievor's circumstances. The grievor received a six-month term position on October 1, 2018. On February 25, 2019, she was appointed to an indeterminate SP-05 and at the same time appointed to an acting AU-01 position. Although this made her eligible for Pay Note 3, it did not apply, as she did not remain in the acting position for the required 52 weeks. Her SP-05 increment date would have been set to February 25, 2020, and Pay Note 3 would have applied only if

she had completed 52 weeks in the acting role. However, she was subsequently promoted to an indeterminate AU-01 position before reaching the SP-05 pay increment date.

[49] Pay Note 3 provides that indeterminate employees acting at a higher level are entitled to an increment after 52 weeks of cumulative service in that role. The employer correctly determined that this provision did not apply to the greivor, as she had not completed 52 weeks in an acting capacity as an indeterminate employee. In fact, she had not yet reached one year of employment when she became indeterminate and ceased acting. However, that does not preclude her from receiving a pay increment under Appendix A of the collective agreement. Rather, she qualifies through the application of Pay Notes 1 and 2, based on her accumulated experience, not her acting capacity.

[50] Pay Notes, as outlined in the collective agreement, govern specific pay scenarios. Two key factors determine pay increments: Pay Note 1 outlines when pay increments occur, while Pay Note 2 explains how to calculate their timing. Specifically, the pay increment date is based on the anniversary of the employee's appointment. Pay Note 1 provides that "[t]he pay increment period for full-time and part-time employees at the AU levels 1 to 6 is fifty-two (52) weeks." According to Pay Note 2, the pay-increment date for an employee **appointed to a position in the AU bargaining unit** is the **anniversary date** of the appointment. A key point is that Pay Note 2 refers to an appointment "… **to a position in the AU classification** …" [emphasis added], without specifying whether it is for a term, casual or an indeterminate position. Pay Note 2 specifies that such an appointment could be a promotion, a demotion, or an appointment from outside the public service.

[51] The employer argues that the grievor's time in her term position does not count as cumulative service towards the required accumulated 52 week. The employer's reading of the collective agreement would mean that the time that an employee spent in a term position would not count for pay increments. That would be contrary to the clear provisions of Pay Notes 1 and 2, which establish a 52-week pay-increment period for **all** AU appointments and define the pay-increment date as the appointment anniversary.

[52] If the parties had intended to limit pay increments to indeterminate employees, they would have clearly stated so in the collective agreement. Given their long bargaining history and the employer's use of term employees, the absence of such a restriction indicates that term employees are eligible for pay increments.

[53] Additionally, excluding term employees would undermine the purpose of pay increments, as they gain experience and contribute value at the same rate as indeterminate employees. This is further supported by the wording of Pay Note 3, which explicitly applies only to indeterminate employees. If a similar limitation was intended for Pay Note 1, it would have been included.

[54] When read in conjunction, Pay Notes 1 and 2 clearly apply to the grievor's situation. While Pay Note 1 establishes the duration of the period after which a pay increment is granted, specifically 52 weeks, Pay Note 2 introduces two additional conditions. First, the employee must be appointed to a position in the AU bargaining unit; second, the pay increment takes effect on their appointment anniversary. The grievor meets all the conditions outlined in Pay Notes 1 and 2.

[55] The plain and ordinary meaning of Pay Notes 1 and 2 implies that the parties intended the pay increment to occur 52 weeks following an appointment to a position within the AU bargaining unit, aligning with the anniversary date of that appointment. In the grievor's case, the initial pay increment date is October 1, 2019.

[56] This interpretation is consistent with the one adopted in *Anderson v. Treasury Board (Canada Border Services Agency)*, 2023 FPSLREB 75 in which the grievors were seasonal border services officers. They argued that they were entitled to an automatic pay increment on the anniversaries of their appointments. The employer contended that they could not be entitled to it at the same time as were their year-round colleagues. Among the issues considered was when the grievors became eligible for their first pay increments. The Board concluded that they were entitled to pay increments on the anniversary dates of their respective appointments (see paragraphs 118 and 134).

[57] A similar interpretation was also used in *Béland Falardeau v. Treasury Board (Department of Employment and Social Development)*, 2024 FPSLREB 67 at paras 42 and 63. In that case, the parties amended their collective agreement to include a provision that provided that all employment periods, regardless of length, would be considered

for a pay increment. The issue was to determine the effective date of the pay increment for term employment that started before the amendment was made. The Board held that it was the grievors' appointment dates to their term positions.

[58] The employer asserts that accepting the bargaining agent's proposed interpretation of the Pay Notes would require the Board to ignore the particular facts of the grievor's employment situation and to disregard the provisions set out in Pay Notes 2 and 3. According to it, the grievor's reading of Pay Note 1, namely, a pay increment was due on the 1-year anniversary of her initial appointment, is wrong. It contends that the griever's interpretation fails to consider her employment situation, and the relevance of Pay Notes 2 and 3.

[59] I do not find this argument persuasive.

[60] First, as previously noted, Pay Notes 1 and 2 are relevant to the grievor's situation. The employer's refusal to grant her the initial pay increment because she was a term employee and was not acting at a higher group and level, constituted an incorrect application of Appendix A. That interpretation incorrectly implies that term employment service does not count toward pay-increment progression. It is common for federal public service employees to transition from term to indeterminate roles, and that reality extends to CRA employees. The employer's interpretation would unfairly deny the recognition of their service as term employees for pay increments. Clearly, this interpretation is not what the parties envisioned when they negotiated Appendix A.

[61] Second, the employer argues that the bargaining interpretation ignores the grievor's "particular" situation. This argument lacks merit. The grievor experienced a period of rapid movement through several roles at the start of her employment with the employer. Within her initial six-month term as an AU-01 officer, she was appointed to the SP-05 indeterminate position and concurrently was offered the acting assignment at the higher group and level (AU-01). She continued in that role until she was appointed to the indeterminate AU-01 position a few months later. However, those circumstances should not constitute grounds for departing from the principles of plain-language interpretation. As the Supreme Court of Canada noted in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 57, while a contract's context is

relevant to its interpretation, it cannot supersede the plain and ordinary meaning of the contractual language.

[62] The plain and obvious meaning of Pay Notes 1 and 2 is that "[t]he pay increment date for an employee … **appointed to a position in the AU classification** …" [emphasis added] is "**the anniversary date**" [emphasis added] of the appointment. The parties negotiated those words and put them in place. They express their consent and intentions and support the grievor's interpretation. Contextual analysis should not outweigh a contract's words; "otherwise, there is little point in writing things down." (*Glaswegian Enterprises Inc. v. BC Tel Mobility Cellular Inc.*,1997 CanLII 4085 (BC CA) at para. 19).

[63] The employer further contends that the bargaining agent's position would amend the collective agreement by adding a monetary benefit which was not negotiated by the parties. I find no basis for this argument.

[64] It is well established that when interpreting a collective agreement, one cannot add benefits that the parties did not negotiate without clear and unambiguous language in the agreement. At the same time, I recognize that depriving employees of a right provided in a collective agreement also requires explicit language to that effect. In the agreement at issue, there is no express provision stating that term employees are not entitled to pay increments. I find that the bargaining's agent interpretation aligns with a straightforward reading of the collective agreement and that it does not attempt to introduce a new benefit out of what was negotiated.

[65] Further, I am guided by the Board's observations in *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55, particularly at paragraph 28. The Board noted the general presumption that parties to a collective agreement intend to create terms that are readily applicable in daily practice. In my view, the most straightforward application of Pay Notes 1, 2, and 3 is to permit pay increments for all employees appointed to positions in the AU bargaining unit.

[66] It is puzzling why the employer uses February 25, 2019 — the date on which the grievor was appointed to the substantive SP-05 position — as the starting point for her pay increments. On that same date, she was in an acting AU-01 role, which she continued in until her AU-01 indeterminate appointment. While she held the substantive SP-05 position on paper, she never practically occupied it. Overall, the

employer's interpretation of the pay-increment period does not align with the grievor's employment history and progression.

VI. Conclusion

[67] The parties' intent is clear in the structure of Appendix A of the collective agreement. Once they established Pay Notes 1 and 2, which grant pay increments to all employees holding positions within the AU bargaining unit, irrespective of their employment status (indeterminate or term), they developed Pay Note 3 as a specific provision governing pay increments for indeterminates employees in acting roles.

[68] Pay Note 3, which governs acting appointments, did not affect the grievor's entitlement to a pay increment following her initial term appointment.

[69] The grievor became eligible for a pay increment on October 1, 2019, upon completing 52 weeks of employment from her appointment as a term employee on October 1, 2018, regardless of any potential advantage or disadvantage to either party.

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

(The Order appears on the next page)

VII. Order

[71] The grievance is allowed.

[72] I declare that the employer violated the collective agreement.

[73] I order the employer to calculate the grievor's pay increments based on her first appointment, which took effect on October 1, 2018, and to pay her any amount owed within 120 days of this decision.

[74] The Board remains seized for 150 days from the issuance of this decision with respect to any concerns that arise from applying it.

October 3, 2025.

Goretti Fukamusenge,
a panel of the Federal Public Sector
Labour Relations and Employment Board