

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

RÉAL P.L. PARENT

Grievor

and

**TREASURY BOARD
(Revenue Canada - Taxation)**

Employer

Before: Muriel Korngold Wexler, Deputy Chairperson

For the Grievor: Lucie Baillairgé, Counsel, Professional Institute of the Public
Service of Canada

For the Employer: Raymond Piché, Counsel

Heard at Montréal, Quebec,,
June 11, 1997

DECISION

This decision deals with the grievance filed by Réal Paul Léo Parent contesting the amount of severance pay awarded by the employer upon his retirement. Mr. Parent duly forwarded the grievance to adjudication and it was heard in Montréal, Quebec on June 11, 1997.

The parties agreed to the facts and filed the following in evidence (Exhibit 3):

- 1. The grievor, Réal Parent, was employed in the Public Service at the Department of National Revenue (Taxation, Customs and Excise) from August 10, 1957 to May 1967. He then returned to the Public Service, with the same department, on October 23, 1967 and remained there until June 28, 1996, the date of his retirement.*
- 2. Mr. Parent was appointed to the position of audit manager, AU-3, on December 19, 1973 at Revenue Canada in Montréal. He was transferred to Laval in 1989 to a position of the same title and level. Subsequently, as a result of a reorganization of duties, his position was converted into that of technical advisor with the same classification (AU-3).*
- 3. On several occasions, Mr. Parent assumed the position of team coordinator, AU-4, in Laval, temporarily replacing the incumbent of that position. Mr. Parent was supposed to assume the duties of the team coordinator, AU-4, in Laval on an acting basis from April 22, 1996 to August 2, 1996. A letter dated May 6, 1996 confirmed Mr. Parent's acting appointment. However, Mr. Parent informed his manager by letter dated June 6, 1996 that he planned to retire on June 28, 1996, the date of his last day of work.*
- 4. Mr. Parent received acting pay at the AU-4 level from April 22, 1996 until the date of his retirement, that is, June 28, 1996.*
- 5. At the time of his retirement, Mr. Parent received severance pay pursuant to article 24.03 of the collective agreement of the Auditing Group, signed August 19, 1988 and which was to expire on May 4, 1990 but which was subsequently extended by legislation. The amount of his severance pay was calculated at the AU-3 level in the amount of \$31,115.02.*
- 6. Since Mr. Parent was paid from April 22, 1996 to June 28, 1996 at the AU-4 level (\$61,141.00), he alleges that his severance pay should have been calculated and*

paid at that level and consequently, that he should have received approximately \$32,811.02.

7. *The employer informed Mr. Parent that it could not grant him severance pay at the AU-4 level because at the time of his retirement he had held the acting position for approximately two months. Unless an employee has held an acting position at the time of his retirement for more than four months, he may not receive severance pay at that position level (acting).*

....

Mr. Parent is claiming the difference of \$1,652.

The parties filed three supporting documents and six related documents.

The clauses applicable to the present case are as follows (Exhibit 1):

ARTICLE 24

SEVERANCE PAY

...

24.01 Under the following circumstances and subject to clause 24.02, an employee shall receive severance benefits calculated on the basis of his weekly rate of pay:

....

(d) Retirement

(1) On retirement when an employee is entitled to an immediate annuity under the Public Service Superannuation Act or when he is entitled to an immediate annual allowance, under the Public Service Superannuation Act,

...

one (1) week's pay for each complete year of continuous employment with a maximum benefit of twenty-eight (28) week's pay.

24.03 The weekly rate of pay referred to in the above clauses shall be the weekly rate of pay to which the employee is entitled for the classification prescribed in his certificate of appointment on the date of the termination of his employment.

27.01 Except as provided in this Article, the terms and conditions governing the application of pay to employees are not affected by this Agreement.

27.02 An employee is entitled to be paid for services rendered at:

(a) the pay specified in Appendix "A", for the classification of the position to which he is appointed, if the classification coincides with that prescribed in his certificate of appointment;

or

(b) the pay specified in Appendix "A", for the classification prescribed in his certificate of appointment, if that classification and the classification of the position to which he is appointed do not coincide.

27.07 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 fifteen (15) consecutive working days, he shall be paid acting pay calculated from the date on which he commenced to act as if he had been appointed to that higher classification level for the period in which he acts.

The question at issue is whether a letter dated May 6, 1996 signed by Michel Gionet, Manager, Audit/Special Audit, constitutes the certificate of appointment mentioned in clause 24.03 of the applicable collective agreement.

The letter of May 6, 1996 (Exhibit 3B) reads as follows:

RE: ACTING APPOINTMENT

Position No: 1246-70333

Job No: AU-012

Dear Sir:

I am pleased to inform you that your acting appointment has been approved to the AU-4 position, Team Coordinator, Audit, Audit/Special Audit Section, Validation and Execution at the Laval Tax Services office.

This appointment is for a determinate period beginning April 22, 1996 and terminating August 2, 1996 unless your services are required for a shorter period.

Your pay will be set in accordance with the Public Service Terms and Conditions of Employment Regulations.

This is a bilingual position and you will be entitled to the \$800.00 per annum bilingual bonus pursuant to the Official Languages Policy.

The position's job description will be provided upon request by your team coordinator or manager.

I would like to remind you that upon this appointment you are required to comply with conflict of interest guidelines. You are therefore required to inform your superior of any commercial or financial interests that may conflict with your duties. You must also inform him of any situation in the performance of your duties in which relatives or friends may be involved so that such cases may be dealt with by another employee of the Department.

Yours truly,

For his part, the employer argued that this letter does not constitute a certificate of appointment and that the only certificate of appointment applicable in this case was the letter of April 9, 1974 (Exhibit 3A) by which Mr. Parent was informed that he had been promoted to the AU-3 level on December 19, 1973.

Arguments

Lucie Baillairgé argued as follows. Under clause 24.01(a) of the collective agreement of the Auditing Group (Code: 204/88), Mr. Parent was entitled to 28 weeks pay. Clause 24.03 sets forth the weekly rate of pay to which he was entitled for the classification prescribed in his certificate of appointment on the date of the termination of his employment. According to Ms. Baillairgé, the letter dated May 6, 1996 (Exhibit 3B) announcing approval of his appointment on an acting basis to the AU-4 level constitutes the certificate of appointment mentioned in clause 24.03.

Ms. Baillairgé added that clause 24.03 does not specify the certificate of appointment of the substantive position. When an employee is appointed to an acting position, a letter is sent to him in this regard. Moreover, the Public Service

Employment Regulations (1993) do not distinguish between acting and permanent appointment. In this regard, Ms. Baillairgé referred to section 5 of the Regulations.

In support of her argument, Ms. Baillairgé cited the following decisions: *Lucas v. Public Service Commission Appeal Board* [1987] 3 F.C. 354 and *Boisclair* (Board file 166-2-25700).

Raymond Piché argued that the role of an adjudicator under the *Public Service Staff Relations Act* is to interpret the collective agreement based on the intent of the parties when the agreement was signed. In the collective agreement in question, reference is made to the rates of pay to which an employee is entitled and on this point, Mr. Piché cited clauses 27.01 and 27.02. Therefore, it is the appointment that determines the pay and article 27 is the only article in the collective agreement which refers to a certificate of appointment. Clause 27.07 provides for acting appointments. However, the department does not have the authority to appoint employees to positions. This authority is held by the Public Service Commission and enacted through its regulations.

According to Mr. Piché, the Regulations define two types of appointments: acting and permanent. Since 1967, appointments have been made based on the merit principle. However, prior to 1993, the *Public Service Employment Act* did not provide for acting appointments. Nevertheless, the concept of acting appointments has always existed and it was the collective agreement that prescribed the rate of pay for such appointments and the conditions under which the employee could hold an acting position for a specific period. Mr. Piché concluded that, if the *Public Service Employment Act* prior to 1993 did not provide for acting appointments, then there were no certificates of appointment for acting appointments issued prior to that date.

The *Public Service Employment Act* in effect as of 1993 does not provide for acting appointments (sections 22 and 24). However, section 35 of this act stipulates that the Public Service Commission may make such regulations as it considers necessary, including “35.(2)(c) respecting appointments to positions in the Public Service on an acting basis . . .”. According to Mr. Piché, that means that acting appointments exist under the Regulations and not the *Public Service Employment Act*. Mr. Piché added that section 5 of the Regulations stipulates:

ACTING APPOINTMENTS

5. *An acting appointment is excluded from the operation of*

(a) sections 10 and 21 of the Act for the period beginning on the day on which the acting appointment is effective and ending on the earliest of

(i) the day that is four months after the effective date of the acting appointment, where the acting appointment is initially made for a period not greater than four months,

(ii) where an acting appointment that is initially made for a period not greater than four months is extended such that the total period of the acting appointment is greater than four months, the day on which the extension is effected, and

(iii) the day on which the acting appointment ends; and

(b) subsections 29(3), 30(1) and (2) and 39(3) and (4) of the Act for the duration of the acting appointment.

However, this section merely provides a right of appeal and does not confer an appointment.

According to Mr. Piché, the *Public Service Employment Act* and Regulations do not make any provision with respect to the terms and conditions of acting appointments and the need to issue a certificate of acting appointment. Consequently, when the collective agreement refers to a certificate of appointment, it is that certificate prescribed in the *Public Service Employment Act*.

In support of his argument, Mr. Piché cited the following decisions: *Langlois* (decision of the Federal Court, Trial Division, T-291-90, unreported, decision rendered on July 11, 1991); *Sinclair* (decision of the Federal Court of Appeal, A-443-90, unreported, decision rendered on December 10, 1991) and *Ouellette* (Board file 166-2-22219).

Reasons

Mr. Parent retired on June 29, 1996. At the time his employment terminated, he had held the position of team coordinator, AU-4, on an acting basis since

April 22, 1996. The collective agreement for the Auditing Group was in effect at the time of his retirement.

The question to be decided is as follows: which document is to be accepted and used as his certificate of appointment for the purpose of calculating his severance pay in accordance with article 24 of the applicable collective agreement?

When Mr. Parent retired, the *Public Service Employment Act* in effect was that of 1993. It is illogical and inconceivable to think that the applicable act is that which was in effect in 1988 or 1990, when the collective agreement was signed or extended. The legislation in effect on those two dates was amended in 1993.

To begin with, section 35 of the *Public Service Employment Act* was amended in 1993 to provide as follows:

35.(1) The Commission may make such regulations as it considers necessary to carry out and give effect to this Act.

(2) Without limiting the generality of subsection (1), the Commission may make regulations

...

(c) respecting appointments to positions in the Public Service on an acting basis and the maximum period for which any such appointments or any class thereof may be made, and excluding any such appointments or any class thereof from the operation of any or all of the provisions of this Act;

The Public Service Commission acted accordingly when, in section 5 of the Regulations, it stipulated:

ACTING APPOINTMENTS

5. An acting appointment is excluded from the operation of

(a) sections 10 and 21 of the Act for the period beginning on the day on which the acting appointment is effective and ending on the earliest of

(i) the day that is four months after the effective date of the acting appointment, where the acting appointment is initially made for a period not greater than four months,

(ii) where an acting appointment that is initially made for a period not greater than four months is extended such that the total period of the acting appointment is greater than four months, the day on which the extension is effected, and

(iii) the day on which the acting appointment ends; and

(b) subsections 29(3), 30(1) and (2) and 39(3) and (4) of the Act for the duration of the acting appointment.

Consequently, acting appointments were explicitly provided for in the *Public Service Employment Act* and the Regulations. The concept of acting appointment exists in law under this act and its regulations. The decisions cited by the parties, with the exception of *Boisclair* (supra), are not particularly relevant since they predate 1993 when the Act and Regulations were amended.

I agree with the reasoning of Rosemary Vondette Simpson, a member of the Board, in *Boisclair* when she ruled that the letter of appointment to an acting position is the same as the certificate of appointment prescribed in the collective agreement. Moreover, clause 24.03 of the collective agreement of the Auditing Group does not restrict this certificate of appointment to the substantive position since the expression “to the substantive position” is not mentioned anywhere

For these reasons, I allow Mr. Parent’s grievance. He is entitled to have his severance pay calculated at the rate of pay of the AU-4 position he held on June 28, 1996.

Muriel Korngold Wexler
Deputy Chairperson

OTTAWA, July 14, 1997

Certified true translation

Serge Lareau