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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

CRAIG ALGUIRE

Grievor

and

**TREASURY BOARD
(Transport Canada)**

Employer

Before: Colin Taylor, Q.C., Board Member

For the Grievor: Ron Richardson, Aircraft Operations Group Association

For the Employer: Greg Temelini, Council

Heard at Kelowna, British Columbia,
April 11 and 12, 2001

DECISION

[1] Mr. Craig Alguire is a long-term employee of Transport Canada where he has served in the CAI classification for some 17 years. In 1996, he was classified CAI-04 at step 5 of the pay scale.

[2] On or about September 3, 1996, Mr. Alguire took a voluntary deployment to a CAI position in Kelowna, BC. His position was classified at the CAI-02 level – step 7. This was a voluntary move on the part of Mr. Alguire and he has no disagreement with his classification and rate of pay as a result of that deployment.

[3] On or about December 7, 1998, Mr. Alguire accepted a temporary assignment as Designated Site Official (DSO) at Kelowna, BC. He was assigned to an acting CAI-03 position for the duration of his assignment to the DSO duties and paid at step 4.

[4] Mr. Alguire has filed a grievance whereby he claims he should have been paid at the top of the CAI-03 pay scale (step 6). Mr. Richardson, counsel for Mr. Alguire, submitted:

“The step 4 pay was based on his previous pay as CAI-02 step 7 and was done without competition; however, his pay as CAI-02 step 7 was based on his rise through the ranks to a CAI-04 step 5. It follows if he can be paid as CAI-03 step 4 on the grounds of his previous experience as a substantive CAI-02 step 7 there is no reason why he should not have been paid as CAI-03 step 6 on the grounds that he had the experience, knowledge and seniority to have previously held the position of CAI-04 step 5.”

[5] The issue, then, is whether Mr. Alguire was paid in accordance with the collective agreement for the duration of his temporary assignment as DSO at Kelowna. He was paid at CAI-03 step 4. The grievance seeks pay at CAI-03 step 6.

[6] This dispute is governed by the collective agreement between Treasury Board and the Aircraft Operations Group Association. Article 21.01 of the current Agreement (which is, in substance, no different than the preceding Agreement) reads as follows:

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

[7] That provision incorporates the Public Service Terms and Conditions of Employment Regulations: Sinclair v. Canada (Treasury Board), [1991] 137 N.R. 345 (F.C.A.).

[8] At p.2 (Quicklaw version) of Sinclair, the Court said:

“The appointment of the Appellant to his new position required a recalculation of his pay. This recalculation was to be done in accordance Regulations are incorporated in the Master Agreement governing the labour relations of with the Terms and Conditions of Employment Regulations adopted by Treasury Board and set out in the Personnel Management Manual, Vol. 8, chapter 2-1, which the unionized members of the Public Service [Footnote appended to judgment].”

[9] The “Footnote appended to judgment” is identical to Article 21.01.

[10] The provisions of the Regulations which bear on this grievance are as follows:

“2. In these regulations,

substantive level means the group and level to which an employee has been appointed or deployed under the Public Service Employment Act, other than in an acting assignment situation; (niveau de titularisation).

...

23. *The rate of pay on appointment or deployment of an employee, a person in the Public Service, a member of the Royal Canadian Mounted Police or of the Canadian Armed Forces to a position to which these regulations apply, shall be established in accordance with the promotion, deployment and transfer by appointment or demotion rules as applicable.*

a. *Rate of pay on promotion*

24.(1) The appointment of an employee described in Section 23 constitutes a promotion where the maximum rate of pay applicable to the position to which that person is appointed exceeds the maximum rate of pay applicable to the employee’s substantive level immediately before that appointment by:

(a) an amount equal to at least the lowest pay increment for the position to which he or she is appointed, where that position has more than one rate of pay; or

(b) an amount equal to at least four per cent of the maximum rate of pay for the position held by the employee immediately prior to that appointment, where the position to which he or she is appointed has only one rate of pay.

24.(2) Subject to Sections 27 and 28, on promotion, the rate of pay shall be the rate of pay nearest that to which the employee was entitled in his or her substantive level immediately before the appointment that gives the employee an increase in pay as specified in subsection (1) above; or an amount equal to at least four per cent of the maximum rate of pay for the position to which he or she is appointed, where the salary for the position to which the appointment is made is governed by performance pay.

Article 23 provides that appointments within the Public Service fall into one of three categories:

- promotion;*
- transfer/deployment;*
- demotion.*

[11] The first task, then, is to determine which of the three categories correctly characterizes Mr. Alguire's acting appointment as Designated Site Official in or about December 1998. That appointment terminated in or about June 2000.

[12] The answer to that question is dependent upon establishing Mr. Alguire's "substantive level immediately before that appointment".

[13] It is common ground that Mr. Alguire's appointment as a CAI-02 from a CAI-04 in September 1996 was a transfer/deployment. It was not a promotion because the maximum rate of pay in the CAI-02 position was less than the maximum rate of pay in the position from which Mr. Alguire was appointed. It was not a demotion since it did not result from action taken under s.50(a) of the Regulations. It was, therefore, a transfer/deployment which Mr. Alguire elected to take and he has no disagreement with the CAI-02 classification and step 7 pay which attached to that appointment.

[14] Section 24(1) of the Regulations speaks to the "substantive level immediately before that appointment"; "substantive level" is defined as the group and level to which an employee has been appointed or deployed other than in an acting assignment.

[15] It is clear, then, that Mr. Alguire's substantive level at the date of his acting assignment to DSO was CAI-02. That was his substantive level immediately before his appointment to the CAI-03 position. Mr. Alguire does not agree with that. He argued that his substantive level was a CAI-04 because he had once been appointed to that group and level. He fastened on the words "has been appointed or deployed" in the definition of "substantive level" and asserted that, for the purpose of determining his wage rate in the acting position, he should be considered as having come from a CAI-04 position.

[16] Mr. Alguire's submission ignores the clear words of s.24(1) which refers to the substantive level "immediately before" the appointment. His group and level immediately before accepting the temporary DSO position was CAI-02 step 7. Mr. Alguire wishes to reach back to the position he voluntarily left to accept the CAI-02 position. But, he was unable to point to a provision of the collective agreement which supported that submission.

[17] Once appointed to the CAI-02 position, that became Mr. Alguire's substantive level. Thereafter, the pay rate of new appointments fell to be determined in accordance with the pay rate of that substantive position. It follows that when he accepted the acting assignment to the DSO position, Mr. Alguire must be considered to have moved from a CAI-02 position and not a CAI-04 position as he argued. The CAI-04 position ceased to be his substantive level once he occupied the CAI-02 position and he was unable to point to any provision of the collective agreement which allowed him to ride both horses at the same time.

[18] Once it is determined that Mr. Alguire's substantive level at the relevant time was CAI-02, then it is a matter of applying s.24 of the Regulations to determine if the temporary appointment was a promotion. The Employer provided the following application of s.24 to the facts in issue to demonstrate that Mr. Alguire's temporary appointment was a promotion:

"Calculating Acting Salary from CAI-2 to CAI-3

1. *Difference in maximum 66,734 (CAI-3)*
-60,631 (CAI-2)
\$6,103

2. Determine lowest 59,638
 increment in CAI-3 -57,986
 level 1,652

3. Difference in maximums \$6,103 is higher than lowest increment \$1,652, appointment is a promotion

4. Determine rate of pay, add lowest increment (\$1,652) to employee's current rate of pay

60,631 (CAI-2)
+1,652 (lowest inc in CAI-3)
 62,283

5. Find rate of pay in CAI 3 level that is nearest to but not less than \$62,283

= \$63,085 (CAI 3)"

[19] Mr. Alguire did not take any exception to that calculation. He argued that, since he had already climbed the "ladder" of pay levels at the CAI-04 position, he should not have to climb the "ladder" twice and the "fair and equitable" resolution to the dispute was to pay him at CAI-03 step 6 for the time he spent in the acting DSO position. As persuasive as that may be, it does not address the provisions of the collective agreement.

[20] In the result, it is determined that Mr. Alguire was compensated in accordance with the collective agreement while serving in the acting position and the grievance is denied.

DATED at Vancouver, British Columbia, this day of May, 2001.

Colin Taylor, Q.C.