Federal Court  Cour fédérale

Date: 20150116

Dockets: T-1579-13
T-2051-13

Citation: 2015 FC 55

Ottawa, Ontario, January 16, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Public Service Alliance of Canada [the Union or Applicant] applies for judicial review, pursuant to section 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7, in respect of two decisions made by the acting Chairperson of the Public Service Labour Relations Board [the Acting Chairperson or AC] (see: 2013 PSLRB 98, and 2013 PSLRB 99). The AC refused to refer some proposed collective agreement provisions to arbitration, and the Applicant now asks this

Court to set aside the AC's decisions and return the matters to the Chairperson for re-determination. The Attorney General of Canada [the Respondent] opposes the Applicant's applications. Both parties request their costs.

[2] The Union originally applied for judicial review in respect of only one of the AC's decisions (Court file: T-1579-13), since there was some internal confusion about how many decisions there were. Once the Union sorted out such confusion, it moved for an extension of time to apply for judicial review of the AC's second decision (Court file: T-2051-13) and asked that the second application be heard at the same time as the first one. This Court granted the Applicant's motion in this regard on December 2, 2013.

[3] These reasons for judgment determine both applications for judicial review. Accordingly, I direct that a copy of this judgment and reasons be placed in each of Court files T-1579-13 and T-2051-13.

II. Background

[4] The Union represents certain employees who carry out survey activities for Statistics Survey Operations [the Employer]. These employees are divided into two bargaining units: one unit covers those employees primarily in the Statistics Canada Regional Offices [the Regional Office Interviewers]; the other unit covers the remaining employees [the Field Interviewers]. The Regional Office Interviewers typically conduct telephone surveys, and the Field Interviewers interview survey respondents in their homes. Except for business surveys, the work is usually

done during evenings and on weekends. All employees are part-time, although some are hired only for a specified term and some employees have indeterminate status.

[5] The collective agreements for both units expired on November 30, 2011. The Union attempted to negotiate new collective agreements for each unit and managed to secure agreement with the Employer on some terms, but not on others. The Union therefore requested arbitration pursuant to section 136(1) of the *Public Service Labour Relations Act*, SC 2003, c 22, s 2 [the *Act*], and proposed a list of the terms and conditions of employment it sought. The Employer responded with its own requests and also objected to some of the Union's proposals. By the time the AC decided whether to refer the matters to arbitration pursuant to section 144(1) of the *Act*, the parties disputed only the jurisdiction of the arbitrator to consider two of the proposed clauses for each collective agreement.

[6] For the Regional Office Interviewers, the proposed clauses are these:

> **23.16 Scheduling of Work Hours**
>
> a) Hours of work associated with on-going surveys shall first be assigned to available indeterminate employees.
>
> b) If there are insufficient indeterminate employees available to work the hours associated with an on-going survey, the hours shall then be offered to available term employees.
>
> c) Hours of work associated with ad hoc surveys shall first be assigned to available indeterminate employees.
>
> d) If there are insufficient indeterminate employees available to work the hours associated with an ad hoc survey, the hours shall then be offered to available term employees.
>
> e) When hours of work associated with a survey become available, they shall be assigned first to available employees who

are trained to work the survey, following the preference order outlined above.

f) In the event that there are insufficient trained employees, the Employer shall assign the hours and provide the necessary training to available indeterminate employees.

g) If there are insufficient indeterminate employees available, the hours shall be assigned and the necessary training provided to available term employees.

h) Employees must meet language requirements to work the hours associated with a survey.

i) For each level of the preference order outlined in a) through h) above, where there are excessive employees available, the hours of works shall be assigned in order of seniority.

23.17 Population of Work Schedules

Once the Employer has determined the collection period, targeted hours, peak calling periods and the number of employees required to work a survey, the Employer shall schedule hours following the preference order outlined in 23.16 and in such a way as to maximize straight-time hours by seniority.

[7] For Field Interviewers, the proposed clauses are these:

23.14 Hours of Work Assignment – Field Interviewers

a. Hours of work shall be offered in order of seniority, based on the following preference order:

i. Indeterminate employees whose place of residence is within the survey cluster where the hours are to be worked.

ii. Indeterminate employees whose place of residence is within twenty (20) kilometers of the survey cluster where the hours are to be worked.

iii. Term employees whose place of residence is within the survey cluster where the hours are to be worked.

iv. Term employees whose place of residence is within twenty (20) kilometers of the survey cluster where the hours are to be worked.

b. In the event there are no available employees whose place of residence is within the survey cluster or within a twenty (20) kilometer radius of the survey cluster, then the Employer will either:

i. hire a new employee to work the survey

or

ii. offer the hours to the employee whose residence is nearest to the cluster.

c. Should the Employer elect to offer hours of work consistent with b) ii) above, in the event that there are two or more employees whose place of residence is equidistant to the cluster within five (5) kilometers, the hours shall be offered in order of seniority.

d. Hours of work shall be offered first to available employees who are trained to work the survey, following the process outlined in a) above.

e. In the event that there are insufficient trained employees, the Employer shall offer the hours and provide the necessary training, following the process outlined in a) above.

f. Employees must meet language requirements to work a survey.

23.15 Hours of Work Assignment – Senior Interviewers

a. Hours of work associated with continuous surveys shall continue to be offered to Senior Interviewers based on geographies in effect as of December 1, 2011.

b. Should the Employer elect not to staff a geography, the hours of work associated with that geography shall first be offered to Senior Interviewers working in the same Region in order of proximity to that geography.

c. Hours of work associated with supplementary surveys shall be assigned by the Employer first to Senior Interviewers in the province where the supplementary surveys are to be conducted, and shall be assigned in such a way as to ensure that hours of work are maximized by seniority according to employees' availability.

[8] The Employer objected to these proposed clauses, arguing that each of them was precluded from arbitration by virtue of paragraphs 150(1)(c) and (e) of the *Act*. These paragraphs provide as follows:

150. (1) The arbitral award may not, directly or indirectly, alter or eliminate any existing term or condition of employment, or establish any new term or condition of employment, if	**150.** (1) La décision arbitrale ne peut avoir pour effet direct ou indirect de modifier, supprimer ou établir une condition d'emploi :
…	**…**
(c) the term or condition relates to standards, procedures or processes governing the appointment, appraisal, promotion, deployment, rejection on probation or lay-off of employees;…	*c)* soit qui porte sur des normes, procédures ou méthodes régissant la nomination, l'évaluation, l'avancement, la mutation, le renvoi en cours de stage ou la mise en disponibilité des fonctionnaires;
…	…
(e) doing so would affect the organization of the public service or the assignment of duties to, and the classification of, positions and persons employed in the public service.	*e)* soit de manière que cela aurait une incidence sur l'organisation de la fonction publique, l'attribution de fonctions aux postes et aux personnes employées au sein de celle-ci et leur classification.

III. Decisions under Review

[9] The AC heard the two matters together and issued similar decisions for each matter dated August 27, 2013.

[10] Relying on *Association of Justice Counsel v Canada (Treasury Board)*, 2009 PSLRB 20 at para 28 [*Association of Justice Counsel*], the AC determined that section 150 of the *Act* is to be interpreted broadly and that an "arbitration board may not deal with a term or condition of employment even if it incidentally affects or encroaches upon one of the prohibited grounds recited in section 150".

[11] Although some decisions made under the *Parliamentary Employment and Staff Relations Act*, RSC 1985, c 33 (2nd Supp) [the *PESRA*] suggested that issues surrounding hours of work, seniority and scheduling are appropriate for arbitration, the AC distinguished those decisions on the basis that there is no provision analogous to paragraph 150(1)(e) of the *Act* in the *PESRA*. The AC determined that the proposed clause 23.16 in respect of the Regional Office Interviewers, and the proposed clause 23.14 in respect of the Field Interviewers, each contravened paragraph 150(1)(e) of the *Act* since they would dictate "the manner in which the employer must assign hours of work". The AC further found that the Employer could not hire new employees until all the steps in these proposals were complete, something which is contrary to paragraph 150(1)(c) of the *Act*.

[12] Since the proposed clause 23.17 for the Regional Office Interviewers depended on the proposed clause 23.16, the AC further found that it too was beyond the jurisdiction of an arbitration board under the *Act*.

[13] As for the proposed clause 23.15 in respect of the Field Interviewers, the AC determined that it would infringe on ministerial authority under section 5 of the *Statistics Act*, RSC 1985,

c S-19, to "… employ … enumerators … as are necessary to collect … such statistics and information as the Minister deems useful and in the public interest". Furthermore, the AC decided that since clause 23.15 obliged the Employer to assign work on the basis of geography, it also contravened paragraph 150(1)(e) of the *Act*.

IV. Issues

[14] The parties agree that the same two issues need to be considered for each of the Acting Chairperson's decisions:

1. What is the standard of review?
2. Were the decisions unreasonable?

[15] However, the parties make some arguments that are unique to each decision, so it is convenient to isolate the issues as follows:

1. What is the standard of review?
2. Was it unreasonable for the AC to disregard the cases interpreting the *PESRA*?
3. Was it unreasonable for the AC to exclude proposals pursuant to paragraph 150(1)(c) of the *Act*?
4. Was the AC's interpretation of section 5 of the *Statistics Act* unreasonable?
5. Was it unreasonable for the AC not to consider amending the proposals?

V. The Parties' Submissions

A. *The Applicant's Arguments*

[16] The Applicant acknowledges that the AC's decisions should be reviewed on the reasonableness standard (*Public Service Alliance of Canada v Senate of Canada*, 2011 FCA 214 at paras 25, 31, 336 DLR (4th) 540 [*Senate of Canada*]), but emphasizes that the analysis is contextual and that the Court needs to ask itself whether the AC's decision is within the range of reasonable outcomes (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339).

[17] The Applicant says that decisions with respect to the *PESRA* are important in assessing the reasonableness of the decisions now under review. The Applicant argues that the AC unreasonably dismissed jurisprudence which had established that scheduling shifts on the basis of seniority could be done without infringing managerial authority under the *PESRA* (*Public Service Alliance of Canada v House of Commons*, 2010 PSLRB 28 at paras 45-47; *Public Service Alliance of Canada v House of Commons*, 2010 PSLRB 14 at para 51; *Public Service Alliance of Canada v House of Commons*, [1990] CPSSRB No 153 (QL) [collectively, the *PESRA* cases]). The Applicant asserts that the AC should have looked to these decisions concerning the *PESRA* and sought consistency.

[18] Although the AC was correct to note that the *PESRA* has no provision identical to paragraph 150(1)(e) of the *Act*, the Applicant states that the *PESRA* does have section 5(3), which provides that "[n]othing in this Part shall be construed to affect the right or authority of an

employer to determine the organization of the employer and to assign duties and classify positions of employment". That section, according to the Applicant, is analogous to section 7 of the *Act*, whose predecessor operated to stop an arbitral award from affecting the assignment of duties even before paragraph 150(1)(e) was enacted (Christopher Rootham, *Labour and Employment in the Federal Public Service* (Toronto, ON: Irwin Law Inc, 2007) at 192; *Public Service Alliance of Canada v Canada (Treasury Board)* (1986), [1987] 2 FCR 471 at 475-476, 34 DLR (4th) 641 (CA) [*Treasury Board*]). Accordingly, since both the *Act* and the *PESRA* equally prohibit interference with the employer's authority to assign duties, the Applicant says it was unreasonable for the AC to reject the decisions made under the *PESRA* on that basis.

[19] The Applicant also contends that the AC erred by finding that the proposed clauses with respect to the Regional Office Interviewers interfered with the Employer's authority to hire. According to the Applicant, such a clause would require express language to that effect and the proposed clause 23.16 says nothing of the sort; it simply prescribes a process of assigning hours to existing employees. The Applicant states that the proposed clauses for the Regional Office Interviewers are merely an overtime proposal.

[20] As for the decision with respect to the Field Interviewers, the Applicant says that the AC misinterpreted section 5 of the *Statistics Act*. The Employer had the burden to show how the proposal would contravene that Act, the Applicant submits, and it supplied nothing but a vague assertion. The AC did no better, the Applicant argues, and his reasons do not explain this finding. In addition, the Applicant asserts that the proposed clause 23.15 in respect of the Field

Interviewers is not an encroachment upon the Employer's ability or authority to assign work since it merely addresses the allocation of work hours.

[21] Finally, even if the decisions were otherwise reasonable, the Applicant states that it had asked the AC to consider severing or amending the proposed clauses so that they came within an arbitrator's jurisdiction (*Association of Justice Counsel* at paras 43, 46, 65). The AC did not do this, and the Applicant says that was unreasonable.

B. *The Respondent's Arguments*

[22] The Respondent agrees with the Applicant that the standard of review is reasonableness. Since the decisions under review involve proposed provisions of collective agreements, the Respondent says deference must be afforded to the AC's interpretation of them.

[23] The Respondent contends that the Acting Chairperson reasonably dismissed the jurisprudence relating to the *PESRA*. Unlike every other paragraph of section 150(1) of the *Act*, the Respondent notes that paragraph 150(1)(e) of the *Act* has no direct analogue in the *PESRA*. The Respondent argues that the AC made no error in assigning significance to that fact, especially since the Applicant's interpretation would make paragraph 150(1)(e) redundant and therefore violate the principle that "no legislative provision should be interpreted so as to render it mere surplusage" (*R v Proulx*, 2000 SCC 5 at para 28, [2000] 1 SCR 61 [*Proulx*]).

[24] Furthermore, the Respondent states that while consistency is desirable, adjudicators are not bound by prior decisions of other adjudicators and they can reasonably depart from such

decisions (*Domtar Inc v Québec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756 at 796, 799-800, 105 DLR (4th) 385 [*Domtar*]). According to the Respondent, a judicial review is not a consistency review.

[25] The Respondent argues that the *PESRA* cases were about scheduling shifts based on seniority, and the Applicant's proposed clauses bear only a tenuous connection to that. Rather, the Respondent states that the disputed clauses engage completely different factors, such as whether the employees were indeterminate or term, whether they had previous training, and, for the Field Interviewers, where they live. In the Respondent's view, the proposed clauses are not limited to merely distributing hours but affect what duties can be performed during those hours (*Treasury Board* at 478). As such, the proposed clauses clearly restrict the Employer's right to assign duties to those employees it deems most suitable to perform them and, thus, violate paragraph 150(1)(e).

[26] The Respondent also argues that the AC reasonably found that the proposed clauses 23.16 and 23.17 in respect of the Regional Office Interviewers would violate paragraph 150(1)(c) of the *Act*. Although these clauses do not specifically mention the hiring process, the Respondent says they would indirectly limit it by ensuring that new employees can neither be trained nor have duties assigned to them unless all of the steps in clause 23.16 are exhausted. This is problematic, the Respondent submits, especially since the Applicant was also proposing to delete a clause from the old collective agreement that codified the Employer's right to hire new staff even if existing employees did not have full-time work.

[27] As for the proposed clause 23.15 in respect of the Field Interviewers, the Respondent concedes that the AC's finding that such clause violated section 5 of the *Statistics Act* was not justified and, therefore, was not reasonable. However, the Respondent says that this finding was not determinative of the matter since, in any event, the AC's finding that paragraph 150(1)(e) of the *Act* would be violated is an independent basis for the decision on this point and should be upheld for that reason.

[28] Finally, the Respondent submits that the onus was upon the Applicant to propose clauses that comply with the *Act* and that the AC had no obligation to rewrite the proposals for the Applicant. In cases where the AC has amended a proposal, the Respondent states that the changes were minor or easily severable. Furthermore, according to the Respondent, it would be unfair to the Employer to significantly change the proposals after the hearing, since the hearing had proceeded on the basis of the clauses as they were proposed by the Applicant and the Employer would be denied the opportunity to address or respond to the amended proposals.

VI. Analysis

A. *What is the standard of review?*

[29] If past jurisprudence has satisfactorily settled on a standard of review for a particular issue, there is no need to repeat the analysis (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62, [2008] 1 SCR 190 [*Dunsmuir*]).

[30] In *Senate of Canada* at paras 21-31, the Federal Court of Appeal applied the reasonableness standard to a decision of the AC not to incorporate into a collective agreement the provisions of an arbitral award because it was precluded under section 55(2) of the *PESRA*. Although the decisions in this case were made by the AC under the *Act* and not the *PESRA*, I agree with the parties that the same standard of review should apply.

[31] Accordingly, the AC's decisions should not be disturbed so long as they are intelligible, justifiable, transparent and defensible in respect of the facts and the law (*Dunsmuir* at para 47). These criteria are met "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708).

B. *Was it reasonable for the Acting Chairperson to disregard the cases interpreting the* PESRA*?*

[32] The Applicant relies on the *PESRA* cases to argue that the proposed clauses do not impair the Employer's ability to assign duties. The AC found, however, that all of the disputed clauses were precluded by paragraph 150(1)(e) of the *Act* and, accordingly, dismissed the relevance of the *PESRA* cases because the *PESRA* has no analogue to that paragraph, which provides as follows:

150. (1) The arbitral award may not, directly or indirectly, alter or eliminate any existing term or condition of employment, or establish any new term or condition of	**150.** (1) La décision arbitrale ne peut avoir pour effet direct ou indirect de modifier, supprimer ou établir une condition d'emploi :

employment, if	
...	...
(e) doing so would affect the organization of the public service or the assignment of duties to, and the classification of, positions and persons employed in the public service.	*e)* soit de manière que cela aurait une incidence sur l'organisation de la fonction publique, l'attribution de fonctions aux postes et aux personnes employées au sein de celle-ci et leur classification.

[33] Despite having no direct equivalent to paragraph 150(1)(e) of the *Act*, however, the Applicant notes that the *PESRA* does include section 5(3), which provides that "[n]othing in this Part shall be construed to affect the right or authority of an employer to determine the organization of the employer and to assign duties and classify positions of employment".

[34] In *Treasury Board*, the Federal Court of Appeal considered a provision almost identical to section 5(3) of the *PESRA* (i.e., section 7 of the *Public Service Staff Relations Act*, RSC 1970, c P-35 [the *PSSRA*] (as it appeared in 1986)), and held (at page 475) that when deciding whether something was arbitrable under section 70(1) of the *PSSRA*, a two-step analysis was required: "it must be established first that it falls within one of the classes of matters set out in subsection 70(1) and then that its effect would leave intact the untouchable prerogatives of Government defined in section 7" (*Treasury Board* at 476). By analogy, the Applicant argues that section 5(3) of the *PESRA* has the same effect that paragraph 150(1)(e) does under the *Act*, so there was no reasonable basis for the AC to distinguish the *PESRA* decisions (*Professional Institute of the Public Service of Canada v Canadian Nuclear Safety Commission*, 2005 PSLRB 174 at para 45).

[35] In my view, however, it was reasonable for the AC to disregard the cases interpreting the *PESRA* for at least three reasons.

[36] First, section 5(3) of the *PESRA* has an analogous provision in section 7 of the *Act*. Accepting the Applicant's argument and interpretation of paragraph 150(1)(e) of the *Act* would make such paragraph redundant, an outcome which should be avoided (*Proulx* at para 28; *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2011 SCC 53 at para 38, [2011] 3 SCR 471). Even if the presumption against tautology could be rebutted, it cannot be said that that would be the only reasonable thing for the AC to do (*Dunsmuir* at para 41).

[37] Second, there are material differences between section 5(3) of the *PESRA* and sections 7 and 150(1)(e) of the *Act*. Most notably, section 5(3) only protects the Employer's right to "assign duties and classify positions of employment" (emphasis added). In *Treasury Board*, the Federal Court of Appeal considered this language significant, saying (at page 477) that the analogue to section 5(3) in that case "speaks of the organization of the Public Service and specifically of the assigning of duties to positions within the Public Service. It does not speak, as the Board seems to have understood, of the assigning of duties to persons" (emphasis added). The same is not true of section 7 of the *Act*, which enshrines the Employer's right "to assign duties to and to classify positions and persons" (emphasis added). Paragraph 150(1)(e) also includes persons within its scope.

[38] Third, while consistency may be desirable (*Spacek v Canada Revenue Agency*, 2006 PSLRB 104 at paras 37-38, [2006] CPSLRB No 105 (QL)), previous arbitral decisions are not

binding (*Domtar* at 796, 799-801). Accordingly, even if the *PESRA* decisions were directly on point, the mere fact that the AC departed from them would not make his decisions unreasonable if they are otherwise defensible in respect of the facts and the law. In this case, the proposed clauses dictated which employees would work on any particular survey since they would make it impossible to assign work to term employees if qualified indeterminate employees were available and willing to do it. It was reasonable for the AC to find that this had at least an incidental impact on the Employer's ability to assign duties to persons.

[39] For these reasons, it is understandable why the Acting Chairperson departed from the jurisprudence relating to the *PESRA* and this outcome is within the range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

C. *Was it unreasonable for the Acting Chairperson to exclude the proposals pursuant to paragraph 150(1)(c) of the* Act*?*

[40] The AC found that every proposed clause except for clause 23.15 of the Field Interviewers' proposal interfered with the Employer's ability to make hiring decisions contrary to paragraph 150(1)(c) of the *Act*. In view of the foregoing reasons, I find it unnecessary to assess the reasonableness of that finding. Irrespective of how reasonable or unreasonable it may be, the AC's decisions that the proposed clauses violated paragraph 150(1)(e) were reasonable and that determination on its own was sufficient for the AC not to include the proposed clauses in the terms of reference.

D. *Was the Acting Chairperson's interpretation of section 5 of the* Statistics Act *unreasonable?*

[41] Section 5(1) of the *Statistics Act* provides the following:

5. (1) The Minister may employ, in the manner authorized by law, such commissioners, enumerators, agents or other persons as are necessary to collect for Statistics Canada such statistics and information as the Minister deems useful and in the public interest relating to such commercial, industrial, financial, social, economic and other activities as the Minister may determine, and the duties of the commissioners, enumerators, agents or other persons shall be those duties prescribed by the Minister.	**5.** (1) Le ministre peut employer, de la manière autorisée par la loi, les commissaires, recenseurs, agents ou autres personnes qui sont nécessaires à la collecte, pour Statistique Canada, des statistiques et des renseignements qu'il estime utiles et d'intérêt public, concernant les activités commerciales, industrielles, financières, sociales, économiques et autres, qu'il peut déterminer. Leurs fonctions sont celles qu'il prescrit.

[42] The Acting Chairperson found that the proposed clause 23.15 infringed on the Minister's authority under section 5(1) to "employ … enumerators … as are necessary to collect … such statistics and information as the Minister deems useful and in the public interest".

[43] The Respondent conceded that this was unreasonable and I agree. The AC never explained why he made that finding, so this aspect of the AC's decision is not understandable.

[44] Nevertheless, the AC also found that the proposed clause 23.15 would interfere with the Employer's rights under paragraph 150(1)(e) of the *Act*. Accordingly, for the same reasons given

above, that finding was reasonable and, as such, the AC's decision not to add the proposed clause 23.15 to the terms of reference should not be disturbed.

E. *Was it unreasonable for the Acting Chairperson not to consider amending the proposal?*

[45] The statutory authority to make the decisions under review is found in section 144(1) of the *Act*, which provides as follows:

144. (1) Subject to section 150, after establishing the arbitration board, the Chairperson must without delay refer the matters in dispute to the board.	**144.** (1) Sous réserve de l'article 150, dès la constitution du conseil d'arbitrage, le président lui renvoie les questions en litige.

[46] In my view, this provision does not suggest a strong role for a Chairperson to tinker or meddle in any substantial way with the parties' proposals. Even in *Association of Justice Counsel*, upon which the Applicant relies to establish the AC's authority to amend proposals, the Vice Chairperson described his actions in the following words: "[w]here I have found that parts of some proposals are not within the jurisdiction of an arbitration board, I have severed those parts of the proposals where the rest of the proposal remains within the jurisdiction of the arbitration board" (*Association of Justice Counsel* at para 31, emphasis added).

[47] Indeed, it appears from paragraph 62 of each of the AC's decisions that the Applicant only asked the acting Chairperson to amend the proposals as an alternative outcome: "in the event that some language would cause an encroachment" on the Employer's prerogatives. In this case, it was not just the language of the proposals that infringed the Employer's prerogatives; it

was their underlying objective. It is evident that the AC did not expressly consider amending the proposed clauses because no amendments could cure that defect.

[48] It also appears, from paragraph 53 of the AC's decision with respect to the Regional Office Interviewers, that the only concrete amendment the Applicant suggested to the AC was a reversion to the original language of the proposed clauses, a proposal which, if anything, was a greater restriction on the Employer's ability to assign duties since it regulated the assignment of "work", not just "hours of work".

[49] On this issue, therefore, I agree with the Respondent that the AC was not required to expressly consider amending the proposed clauses in these circumstances.

VII. Conclusion

[50] In the result, both applications for judicial review are dismissed since each of the AC's decisions is defensible in respect of the facts and the law and within the range of acceptable and reasonable outcomes.

[51] The parties agreed at the hearing of this matter that costs should follow the event and I see no reason to depart from that. Accordingly, the Respondent shall have its costs fixed at the amount it has requested; that is, $2,500.00 in respect of each application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review in each of Court files T-1579-13 and T-2051-13 is dismissed;

2. the Respondent shall have its costs fixed in the amount of $2,500.00 in each of Court files T-1579-13 and T-2051-13; and

3. a copy of this judgment and reasons shall be placed in each of Court files T-1579-13 and T-2051-13.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	T-1579-13 and T-2051-13
STYLE OF CAUSE:	PUBLIC SERVICE ALLIANCE OF CANADA v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	OCTOBER 8, 2014
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	JANUARY 16, 2015

APPEARANCES:

Andrew Raven	FOR THE APPLICANT
Joshua Alcock	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Raven, Cameron, Ballantyne & Yazbeck LLP Barristers and Solicitors Ottawa, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT