

Federal Court



Cour fédérale

**Date: 20170405**

**Docket: T-1263-16**

**Citation: 2017 FC 345**

**Ottawa, Ontario, April 05, 2017**

**PRESENT: The Honourable Madam Justice McDonald**

**BETWEEN:**

**STEVE MORRISEY, THOMAS KINGSTON,  
GILLES LACHANCE, ROBERT MILLAIRE  
AND RANDELL LATTE**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants, who are employed in the Information Technology [IT] field as Customer Service Team representatives with the Department of National Defence [DND] in Halifax, Nova Scotia, seek judicial review of a job classification grievance. They filed grievances contending that their positions at the CS-01 level should be classified upward to the CS-02 level to match that of their colleague in Shearwater, NS. They claim the positions share identical duties and responsibilities. They argue that the Classification Grievance Committee's [the Committee]

findings, which were relied upon by the Deputy Minister's delegate in his decision to maintain the classification at the CS-01 level, failed to consider the principle of internal relativey concerning the comparator position in Shearwater. The Applicants argue that the refusal to have their positions re-classified at a CS-02 level was unreasonable.

[2] For the reasons that follow, I find that the Deputy Minister's delegate decision, which approved the findings made by the Committee, to be reasonable. Therefore, this judicial review is dismissed.

I. Background Facts

[3] In 2002, five new CS-01 group and level positions were created within the same section of DND with the job title: "Client Service Team Representative". These five positions had the same work description and functions. Four of the positions were in Halifax, one position was in Shearwater.

[4] In 2008, the Shearwater position received a new work description and an updated classification to a CS-02 level.

[5] In 2009, the Applicants in the Halifax positions requested a complete statement of duties and responsibilities of their positions. In 2010, they requested an updated work description. Despite this, the classification for the Applicants' positions came back at the CS-01 level.

[6] In 2011, as a result of a job content grievance, the Applicants received a revised work description. The work description had the positions classified at the CS-01 level. The classification evaluation officers evaluated the position against the Treasury Board Computer System Administration Group [CS] Classification Standard and the bench-mark positions contained in that Standard.

[7] Following an agreement on a new work description, the Applicants each sought to have their position as Client Service Team Representative reclassified from a CS-01 to a CS-02 group and level through the classification review process.

[8] The Applicants and their manager each completed a joint questionnaire, as required by the classification review process. In the joint questionnaire submitted by Steve Morrissey, he argued that in order to respect internal relativity, his position should be classified at the same group and level as the CS-02 Shearwater position. His argument was based on the fact that all five original Client Service work descriptions entailed the same duties and the fact that the employees assigned to these positions were eventually assigned more responsibility following the original 2002 work description.

[9] In the July 12, 2012 Classification Consensus Report, the classification evaluation officers concluded that the Applicants' positions should remain classified at a CS-01 level. Following this determination, the Applicants filed classification grievances.

II. Decision under review

[10] The Committee was convened on June 8, 2016. The Applicants, with the exception of Mr. LaChance, participated in a teleconference hearing with the Committee. Mr. Morrissey was the spokesperson for all of the Applicants. He argued that the Applicants' duties and responsibilities in their current positions are materially identical to the duties and responsibilities of the comparator position in Shearwater. He therefore submitted that in order to maintain internal relative, the Applicants' positions should also be classified at a CS-02 group and level.

[11] The Committee considered the submissions and examined the duties and responsibilities of the Applicants positions within their organizational context. The Committee unanimously found that the duties of the Applicants met the definition and inclusions of the CS Occupational Group within the Federal public sector. The Committee recommended that the classification of the Applicants' positions be maintained at a CS-01 group and level.

[12] This recommendation was accepted by the Deputy Minister's delegate, Gilles Moreau, by letter dated July 6, 2016.

[13] The Applicants seek judicial review of Mr. Moreau's decision to approve the Committee's recommendations. While the judicial review is of the Moreau decision, in reality, it is the decision of the Committee which Mr. Moreau endorses, which is under review as the Committee is the "*de facto*" decision maker (*McEvoy v. Canada (Attorney General)*, 2013 FC 685 at para 41).

III. Issues

[14] The Applicants raise the following issues:

- I. Did the Committee err by failing to address internal relativity?
- II. Did the Committee provide adequate reasons?

A. *Standard of Review*

[15] The parties are in agreement that reasonableness is the appropriate standard of review (*Boucher v Canada (Attorney General)*, 2016 FC 546 [*Boucher*] at paras 13 and 14).

[16] Classification grievance committee decisions are afforded a high degree of deference in recognition of their specialized function (*Boucher* at para 13).

[17] On judicial review, against the reasonableness standard, the Court is tasked with determining whether the decision is defensible in respect to the facts and the law (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*] at paras 15 and 16; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

B. *Analysis*

- I. Did the Committee err by failing to address internal relativity?

[18] The Applicants argue that the Committee failed to consider their argument that their work is materially identical to the Shearwater position which was re-classified upward to the CS-02

level. They argue that the Committee failed to adhere to the principle of internal relativity between the Halifax and Shearwater positions.

[19] The Applicants further argue that the Committee failed to undertake the required analysis set out in *Appendix B* of the *Directive on Classification Grievances* [*Grievance Directive*] which states as follows:

3.8.1 The Classification Grievance Committee report summarizes the recommendation of the committee, responds to the arguments and relativity put forward by the grievor and the grievor's representative, and provides the analysis used by the committee to arrive at its recommendation.

3.8.1 Le rapport du comité de règlement des griefs de classification résume la recommandation du comité, répond aux arguments et aux points concernant la relativité avancés par le plaignant et son représentant et présente l'analyse dont s'est servi le comité pour formuler sa recommandation.

[20] The Applicants argue that, apart from stating that it could not discern a significant difference between the duties and responsibilities of the Applicants and those of the Shearwater comparator position, no other mention of the comparator position or the relativity analysis is contained in the Committee's findings.

[21] In undertaking its work, the Committee is guided by the relevant policy and directives which outline the factors it must take into consideration.

[22] The *Policy on Classification* provides as follows:

5.1 Objective

5.1 Objectif

This policy:

La présente politique :

5.1.1 Supports the equitable, consistent and effective establishment of the relative value of work in the CPA and ensure that jobs are classified appropriately, in accordance with the relevant occupational group definition and job evaluation standards (classification standards);

5.1.1 Appuie l'établissement équitable, uniforme et efficace de la valeur relative du travail au sein de l'APC et s'assure que les postes soient classifiés correctement et conformément aux définitions des groupes professionnels et aux normes d'évaluation des emplois pertinentes (normes de classification);

...

...

5.2 Expected Results

5.2 Résultats attendus

...

...

5.2.6. Classification relativity is sound and maintained, i.e. identical work is classified at the same occupational group, sub group (if applicable) and level across the CPA and within organizations.

5.2.6 La relativité de la classification est saine et maintenue, à savoir le travail identique est classifié au sein du même groupe professionnel, sous-groupe (le cas échéant) et niveau dans l'ensemble de l'APC et au sein des organismes.

[23] The *Grievance Directive* states as follows at section 6.4:

6.4.1 Establishing the appropriate classification of the grieved position based on the work assigned by the responsible manager, as described in the job description, the organizational context and the information received in the context of the grievance hearing; and

6.4.1 Déterminer la classification appropriée du poste faisant l'objet du grief en fonction du travail attribué par le gestionnaire responsable, tel que décrit dans la description d'emploi, ainsi que du contexte organisationnel et de l'information reçue dans le contexte de l'audience sur le grief.

6.4.2 Submitting to the deputy

6.4.2 Présenter, à

head or delegate a Classification Grievance Committee report and a recommendation on the classification of the grieved position, which is equitable and consistent with Treasury Board classification policy instruments, including the relevant job evaluation standard.

l'administrateur général ou à son délégué, un rapport du comité de règlement des griefs de classification et une recommandation sur la classification du poste faisant l'objet du grief qui soit équitable et conforme aux instruments de politique de classification du Conseil du Trésor, y compris à la norme d'évaluation des emplois pertinente.

[24] Also contained in *Appendix B* of the *Grievance Directive* is the Committee's mandate as follows:

### 3.1 Mandate

The Classification Grievance Committee is responsible for establishing the appropriate classification of the grieved position based on the work assigned by the responsible manager and described in the job description, and the additional information provided by management and the grievor or the grievor's representative. The classification that is recommended to the deputy head or delegate must be equitable and consistent with the Treasury Board classification policy instruments, including the relevant job evaluation standard.

### 3.1 Mandat

Le comité de règlement des griefs de classification doit déterminer la classification appropriée pour le poste faisant l'objet d'un grief en tenant compte du travail attribué par le gestionnaire responsable et décrit dans la description d'emploi ainsi que de l'information supplémentaire présentée par la direction et par le plaignant ou son représentant. La classification recommandée à l'administrateur général ou à son délégué doit être équitable et conforme aux instruments de politique de classification du Conseil du Trésor, y compris à la norme d'évaluation des emplois pertinente.



[25] Further, the Respondent highlights Appendix E of the *Directive on Classification*

[*Classification Directive*] which states:

Classification Relativity	Relativité de la classification
[...]	[...]
Although the application of occupational group definitions, inclusion and exclusion statements, job evaluation standards and related benchmarks take precedence over a relativity analysis, this analysis is valuable in ensuring that similar jobs, in similar organizational contexts and environments produce consistent classification evaluation results.	Bien que l'application des définitions de groupes professionnels, des énoncés d'inclusion et exclusion, des normes d'évaluation et postes repères ont préséance sur l'analyse de la relativité, cette analyse est importante car elle contribue à ce que l'évaluation d'emplois similaires, dans des contextes et des environnements organisationnels similaires, donne des résultats constants.

[26] It is clear from the *Grievance Directive's* mandate and from the *Classification Directive* that the Committee was not limited to only considering the Applicants' positions in relation to the Shearwater position. Rather, when the Committee undertakes its work, the mandate requires it to consider the wider institutional classification context.

[27] Furthermore, internal relativity is only one factor the Committee is to consider. The Applicants only identified one position for the Committee's reference, which is in a different location and within a different organizational context to the Applicants' positions. Therefore, it was not only reasonable, but it was necessary for the Committee to take a broader view of the matter, and ultimately rely upon benchmarking to properly categorize the Applicants' positions

within the full context. It was also reasonable for the Committee to consider positions both above and below the Applicants' positions.

[28] The Committee appropriately assessed the Halifax positions within the overall institutional context and not uniquely by reference to the one comparator position identified by the Applicants. In fact, the relativity between the Applicants' positions and the Shearwater position was assessed in the 2012 Classification Consensus Report which stated that the organizational context is different between the two positions.

[29] The Committee provided a detailed analysis on how they evaluated the Applicants' positions with the comparator's positions in the CS Occupational Group within the Federal public sector. As this Court stated in *Maurice v Canada (Treasury Board)*, 2004 FC 941 at para 34, "in undertaking this exercise the Committee had complete discretion to decide on the weight to be given to certain comparable items".

[30] On judicial review, it is not the role of this Court to reweigh evidence or to decide how much weight the evidence before the Committee should have been given in relation to the internal relativity or benchmarking analysis.

[31] While further elaboration by the Committee on the relativity analysis may have been desirable in light of the Committee's statement that it "could not discern a significant difference between the duties and responsibilities" between the Applicants position and that of the

Shearwater position, the failure of the Committee to do so is not in itself a reviewable error upon which this Court can intervene.

[32] The Committee's recommendations, accepted by the Deputy Minister's delegate, that the classification of the Applicants' positions be maintained at a CS-01 group and level, is reasonable and within the range of possible acceptable outcomes. It therefore deserves deference from this Court.

## II. Did the Committee provide adequate reasons?

[33] The Applicants argue that the Committee failed to provide its analysis or an explanation as to how it arrived at its recommendation, contrary to the requirements in section 3.8.1 of the *Grievance Directive*.

[34] While the Applicants formulate this as an "adequacy of reasons" issue, in effect they are essentially re-arguing the points argued with respect to the reasonableness of the decision as addressed above.

[35] Further, I would reiterate what Justice Mandamin states in *McEvoy v Canada (Attorney General)*, 2013 FC 685 in discussing the requirement of a classification grievance committee to review evidence and its reasons:

[79] Decision-makers are not bound to explain why they did not accept every item of evidence before them. It is not necessary for the reasons to list every conceivable factor which may have influenced the decision. [...]

[80] What is required, however, is that the decision maker set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue and the reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

[36] Here, the Committee provided a summary of the Applicants' positions and the evidence submitted. The Committee made it clear, by referring to specific examples, why it did not increase the ratings of the elements of the jobs it assessed (i.e. experience requirements, continuing study requirements, scope of the decision-making and the maintenance of contacts).

[37] Therefore, the Committee's Classification Grievance Report indicates why the Applicants' positions were appropriately classified at the CS-01 group and level.

[38] In *Newfoundland Nurses*, the Supreme Court of Canada held that "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (see para 14).

[39] Here, the reasons of the Committee fall within the range of possible outcomes and are therefore adequate. The Committee's Classification Grievance Report contains the information which the *Grievance Directive* requires it to provide. The reasons of the Committee are therefore reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the judicial review is dismissed with costs of \$3,000.00 to the Respondent.

"Ann Marie McDonald"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1263-16

**STYLE OF CAUSE:** STEVE MORRISEY, THOMAS KINGSTON, GILLES LACHANCE, ROBERT MILLAIRE AND RANDELL LATTER v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** FEBRUARY 6, 2017

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** APRIL 05, 2017

**APPEARANCES:**

Steven Welchner FOR THE APPLICANTS

Joel Stelpstra FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Welchner Law Office FOR THE APPLICANTS  
Ottawa, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Ottawa, Ontario