

Federal Court



Cour fédérale

Date: 20161125

Docket: T-287-16

Citation: 2016 FC 1307

Ottawa, Ontario, November 25, 2016

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

GLORIA ROOPNAUTH

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Gloria Roopnauth, has been employed as a Taxpayer Services Agent with the Canada Revenue Agency for 17 years. She works at a CRA call centre located in Toronto, Ontario. She has applied pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, as amended, for judicial review of a decision which denied her grievance to reclassify her position to a higher level.

I. Background

[2] The Applicant's position with the CRA falls within the Services and Programs [SP] group and is classified at the SP-04 group and level. The work description for her position (number SP0465) outlines the key activities for a Taxpayer Services Agent [TSA] as being: responding to a variety of enquiries or requests by taxpayers related to tax matters, CRA administered programs and related accounts; performing various calculations to determine tax or CRA administered program requirements, elections, entitlements, or administrative relief; accepting payment arrangements where applicable and authorized, within established parameters; and educating taxpayers by providing information and promoting available services.

[3] In 2008, the CRA designated certain tax matters as "centres of expertise" [CoE] topics and trained a group of employees from among the TSAs to deal with enquiries about these topics to improve the accuracy of the information they communicated to the public. A new work description for these employees was not necessary since they were already providing advice on CoE matters, notably as to trusts, designated educational institutions, capital gains, and rental income.

[4] From 2009 to 2010, the CRA conducted a review of its International Tax Services Office located in Ottawa. Employees at this office also belonged to the SP-04 group and level and were responsible for responding to telephone enquiries by non-residents, in addition to answering enquiries on the same range of topics handled by TSAs in other CRA call centres. The CRA migrated all of its international enquiries into its call centres across Canada during 2012 and

2013, and incorporated these enquiries into the CoE workload. A new work description was not necessary as the existing work description for the SP0465 position was not specific to a resident versus non-resident workload.

[5] Since 2012, the Applicant has been responsible for responding to enquiries involving CoE topics. In 2013, the Applicant was invited to attend a training session for non-resident tax services, but the record does not indicate whether she attended this training.

[6] There is a tier system among employees occupying the SP0465 position, such that a tier 1 employee deals with simple inquiries, a tier 2 employee responds to some complex matters, a benefits employee deals with benefit-related inquiries, and, finally, certain employees are responsible for the CoE and non-resident tax matters. All TSAs are classified at the SP-04 group and level irrespective of what type of tax enquiries they handle. Although not all TSAs are actually trained or qualified to address all tax matters, they are all employed in the same position.

[7] The classification of positions for the SP group as a whole is completed through an evaluation using the CRA's *Agency Classification Standard, Services and Programs* [Standard]. This Standard is a tool to determine the appropriate level for SP positions by assigning points to a particular job description based on 12 elements. The maximum points available for each element varies (e.g. "analysis and problem-solving" has a maximum point value of 170 whereas "sensory effort" has a maximum point value of 10). The Standard contains a rating grid and supporting guidelines to determine the appropriate amount of points for each element. The rating grid contains various degrees which correspond to the level of responsibility required for each

element. The rating grid does not allow an evaluator to select a point value that is not associated with a particular degree. After all twelve elements are evaluated and assigned appropriate points, the points are totalled and the total amount of points determines the SP level for a particular position. The point boundary for the SP-04 group and level is 241 to 300.

[8] Following the resolution of classification issues between the CRA and the Union of Taxation Employees about the SP0465 position in March 2014, all affected employees (including the Applicant) were provided with revised work descriptions. On August 11, 2014, the Applicant notified her team manager that she intended to grieve the classification of her position. Her classification grievance requested that her SP0465 position be classified to a higher level because: (1) the most recent evaluation failed to recognize the diverse skillset and expertise of employees within the position and did not acknowledge that TSAs responding to CoE and non-resident tax matters have a greater skillset and knowledge than tier 1 employees; (2) the failure to recognize these differences allowed tier 1 employees to be promoted to a SP-05 position over more experienced and knowledgeable employees; and (3) the external job postings for a SP0465 position did not indicate the different levels of complexity within the position.

[9] It should be noted at this point that the Applicant grieved her discontent with the varying complexity of work among SP0465 employees through the classification grievance procedure. She did not initiate and pursue a work description grievance. Section 4.11 of the *Revenue Canada Agency Classification and Work Description Grievances Procedures* [the Procedures] defines the two types of grievances:

A **classification grievance** is a written complaint by an employee disputing the classification assigned to the work description of the

work performed by the employee and assigned by Agency management.

A **work description grievance** is a written complaint by an employee disputing the content of the statement of duties (work description) assigned by Agency management, which is presently being performed, or disputing the date of the assignment of the duties outlined in the work description. In some situations, work description grievances can involve both job content and effective date issues for the same period of time under question.

[10] The key difference between these grievances is that a classification grievance evaluates a position based on the work description and does not assess whether the work description properly captures the work actually being performed by the grieving employee. Conversely, a work description grievance compares the work completed by the employee with the work description. According to the Procedures (paragraph 4.11(1) (d)), where the employee files both a classification grievance and a work description grievance, the classification grievance will normally be put in abeyance until resolution of the work description grievance.

[11] A Classification Grievance Committee comprised of three members [the Committee] convened in Ottawa on June 10, 2015 to hear the Applicant's classification grievance. The Applicant provided the Committee with a written presentation and also gave oral explanations about her presentation. She requested that the Standard be accommodating to permit the granting of a higher point rating to TSAs with more experience and who are assigned to CoE matters or enquiries from non-residents. The Applicant proposed to the Committee that a five percent increase in the points allocated for six of the 12 elements in the Standard was warranted based on the addition of CoE and non-resident tax matters. Such an increase would raise the total rating

for the SP0465 position beyond the SP-04 point boundary and would result in the Applicant's position being classified at the SP-05 group and level.

[12] Subsequent to the hearing, the Committee sought information from CRA management representatives about the tier system and how work was allocated to and shared among the TSAs. It provided this information to the Applicant by way of an e-mail dated July 29, 2015, to which the Applicant responded in an e-mail dated July 31, 2015.

II. The Committee's Decision

[13] In its report dated December 17, 2015, after summarizing the Applicant's presentation and the information obtained from a CRA management representative, the Committee explained its mandate as follows:

The Committee's mandate is to assess the job using the recognized application principles and the systemic process established in the A CS-SP standard. The Committee members do not have the authority to amend the standard, its assessment grids, or the weighting of elements. Therefore, the arguments that the grievor presented, as well as the method used to propose new point ratings for certain elements, are inadmissible and will not be addressed in the context of this grievance.

[14] The Committee noted that the work description recognized the tier system and the workload assignment; it also noted that the Applicant had confirmed during her presentation that the content of the work description reflected the job responsibilities performed by TSAs. The Committee found that the information from CRA management did not contradict the workload assignment and tier system as described in the work description, noting that the Applicant's response to such information did not provide any new information.

[15] The Committee then proceeded to review in detail all 12 elements in the Standard for the SP0465 position and determined that no change was necessary for any element. The Committee concluded that the grieved job merited classification at the SP-04 group and level with an unchanged total rating of 284 points. Thus, the Committee recommended in its report to the Commissioner's nominee, the Assistant Commissioner of CRA's Human Resources Branch, that the classification for the SP0465 position remain unchanged. The Assistant Commissioner accepted the Committee's recommendation on December 23, 2015.

III. Issues

[16] This application for judicial review raises the following issues:

1. What is the appropriate standard of review?
2. Was the Applicant denied procedural fairness in respect of the decision to deny her grievance?
3. Was the decision to deny the Applicant's grievance reasonable?

IV. Analysis

A. *Standard of Review*

[17] The Applicant challenges the Assistant Commissioner's decision not to change the classification of the SP0465 position, but it is the Committee's process and recommendation that warrant scrutiny. In *McEvoy v Canada (Attorney General)*, 2013 FC 685, [2013] FCJ No 756 [*McEvoy*], aff'd 2014 FCA 164, [2014] FCJ No 762, Justice Mandamin recognized that the Committee is the *de facto* decision-maker:

[41] To begin, it is important to keep in mind that the decision being challenged in this case is the decision of the Nominee to accept the recommendation of the Committee. However, in cases where a classification grievance committee is formed, it is essentially the committee which provides the reasons relied upon. It is the committee who hears the evidence and which is required to afford the parties with the appropriate level of procedural fairness; the Nominee's role in these processes is very limited.

...

[44] It is clear from the above [case law] that it is the Committee which owed the Applicants the appropriate level of procedural fairness and whose decision and recommendation that must be reasonable.

[18] It is well established that the Committee's decision in this case is to be reviewed on the reasonableness standard. In *McEvoy*, the Court noted that classification grievance committees "perform highly specialized functions and possess expertise in matters of classification; decisions made by [these committees]... are to be afforded a high degree of deference. The appropriate standard of review is reasonableness" (*McEvoy* at para 39, cited in *Bourdeau v Canada (Attorney General)*, 2015 FC 1089 at para 31, [2015] FCJ No 1114). Similarly, in *Allard v Canada (Canadian Food Inspection Agency)*, 2012 FC 979 at para 20, 417 FTR 1 [*Allard*], Justice de Montigny found that the reasonableness standard applied because "a classification grievance is a question of mixed fact and law that is within the expertise of the final level decision-maker."

[19] Accordingly, although the Court can intervene "if the decision-maker has overlooked material evidence or taken evidence into account that is inaccurate or not material" (*James v Canada (Attorney General)*, 2015 FC 965 at para 86, 257 ACWS (3d) 113), the decision to deny the Applicant's grievance should not be disturbed so long as it is justifiable, intelligible, and

transparent, and defensible in respect of the facts and the law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those 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).

[20] Whether any rules of procedural fairness were breached in rendering the decision under review is an issue subject to the correctness standard of review (see: *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339). This requires the Court to determine whether in rendering its recommendation the Committee achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3). It is, therefore, not so much a question of whether the decision denying the Applicant’s grievance or the Committee’s recommendation is correct as it is a question of whether the process followed in making the decision was fair (see: *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154 at para 14, 238 ACWS (3d) 199; *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35, 471 FTR 71; and *Allard* at para 21).

[21] In *Fischer v Canada (Attorney General)*, 2012 FC 720 at para 25, 413 FTR 64 [*Fischer*], the Court observed that “the content of the duty of fairness, in the context of classification grievances in the federal public service, falls ‘somewhere in the lower zone of the spectrum’”.

B. *Was the Applicant denied procedural fairness in respect of the decision to deny her grievance?*

[22] The Applicant asserts that the Committee did not ask her to clarify what she herself characterizes as her “harsh response” to the CRA’s management representative’s responses to the two questions posed by the Committee. In response, the Respondent submits that the Committee provided the Applicant an opportunity to respond to the information received from the management representative and that the Applicant exercised this opportunity. According to the Respondent, the Committee was not required to seek clarification on the Applicant’s response to this information. In my view, these submissions raise an issue of procedural fairness. The question then is whether the Committee’s duty of procedural fairness required it to ask the Applicant to clarify her response to the management representative’s responses.

[23] The content of the duty of procedural fairness, although falling on the low end of the spectrum in classification grievances, requires the Committee to afford a grievor with a meaningful opportunity to participate. In *Bulat v Canada (Treasury Board)*, [2000] FCJ No 148 at para 10, 95 ACWS (3d) 99 (FCA) [*Bulat*], Justice Evans discussed the duty during classification grievances, noting that:

An elementary incident of the duty of fairness is that the individual adversely affected should have an adequate opportunity to address an issue that the Committee regarded as central to the disposition of the grievance, but which the grievor did not realise was in dispute and therefore could not have been reasonably expected to anticipate, and to address.

[24] In *Bulat*, the committee was found to have breached its duty of procedural fairness because it based “its negative recommendation on information from a management

representative, which was not disclosed to the appellant for comment” (*Bulat* at para 3). This is not the case here where the information from a management representative was disclosed to the Applicant and she provided a response to such information.

[25] The common law duty of procedural fairness has been codified in the Procedures. Sub-paragraph 2(b) (iv) of the Procedures provides in part that: “If significant new information is presented to the committee by management, the grievor and/or the representative will be provided with the information and have 10 working days to respond.” The Applicant does not allege that the Committee breached this sub-paragraph or that she was not afforded an opportunity to respond to the information from management. Instead, she contends that the Committee was obligated to ask her for clarification after she exercised her opportunity to respond to the management representative’s response. Since the level of procedural fairness in classification grievances lies at the low end of the spectrum, it was not, in my view, incumbent upon the Committee to undertake this proactive approach. The Committee received the Applicant’s written and oral submissions and allowed her to respond to the management representative’s information. No duty of procedural fairness was breached in this regard.

[26] The Applicant further asserts that the Committee failed to follow the Procedures for a classification grievance since it failed to resolve all issues related to the content of the job. This submission appears to be grounded on sub-paragraph 2(a) (ii) of the Procedures, which stipulates that: “A classification grievance will not be heard until all grievances related to the content of the work description have been resolved.” I see no merit in this submission by the Applicant because this sub-paragraph simply requires the Committee to await the resolution of any outstanding

work description grievances before proceeding to classify or reclassify a position. In response to the grievance, the Committee was not required to resolve any issues related to the work description for the position. On the contrary, the Committee's role was only to assess and evaluate the work description as against the 12 elements in the Standard. Indeed, if the Committee had modified the work description or refused to consider the duties and activities in the work description when conducting its classification analysis, it would have erred in so doing (see: *Wilkinson v Canada (Attorney General)*, 2014 FC 741 at para 9, 460 FTR 175; also see: *Allard* at paras 26 and 39).

[27] In short, I find that the Applicant was not denied procedural fairness in the process by which her grievance was denied.

C. *Was the decision to deny the Applicant's grievance reasonable?*

[28] The Applicant contends that the Committee failed to consider the evidence before it as to the "misfit between the job description of the SP-04 classification and the hierarchical structure of knowledge and skills that telephone agents are required to have." According to the Applicant, this hierarchical structure is one in which the SP0465 position encompasses employees with varying degrees of knowledge and responsibility, as some employees have little experience while others are responsible for CoE and non-resident tax matters, with the employees with little experience referring complex matters to the more knowledgeable ones.

[29] The Respondent claims that the Committee considered the evidence concerning the hierarchical structure of the SP0465 position and that the Applicant's submissions about the

organizational structure of the SP0465 position are not relevant in the context of a classification grievance, though they would be so in a work description grievance. According to the Respondent, the Applicant's submissions demonstrate a failure to appreciate the essential difference between a classification grievance and a work description grievance. The Respondent maintains that the Committee reasonably assessed the written work description when employing the Standard to determine an appropriate classification for the position.

[30] In my view, the Committee's reasons in this case make it abundantly clear that it considered the hierarchical organizational structure of the SP0465 position in determining the appropriate classification for the position. The Committee reviewed the Applicant's submissions about the tier system and how the workload is assigned to TSAs, including her reclassification request for TSAs with more experience assigned to CoE matters or enquiries from non-residents. The Committee further asked CRA management representatives about the hierarchy of knowledge and skills embodied in the tier system and about how work is allocated among TSAs. The Committee's reasons reveal that it was alert to the hierarchical organizational structure of the SP0465 position. The Committee's reasons for its recommendation are not unreasonable for want of adequacy.

[31] Moreover, the Committee's determination to not take the Applicant's complaints about the work description into consideration was reasonable for various reasons. First, a classification grievance committee does not have jurisdiction under the Procedures to amend or modify the contents of a work description, although it must review and evaluate the work description when determining an appropriate classification for a position. Second, a classification grievance is

predicated on a grievor's acceptance of the content of the work description for a position; in this case, the Applicant confirmed that the content of the work description reflected the job responsibilities of TSAs. Third, a work or job description can be worded in a general way to encompass varying levels of skills and knowledge. In *Currie v Canada (Canada Customs and Revenue Agency)*, 2006 FCA 194, [2007] 1 FCR 471, Justice Pelletier remarked that:

[1] It is not uncommon for employees who have a common Work Description to have different duties and responsibilities. So long as those different duties and responsibilities all fall within the general language of their common Work Description, all is well....

[32] The Applicant also contends that the questions posed by the Committee to the CRA management representatives showed a poor understanding of the issues in her grievance and that the responses from the management representative gave a distorted and falsified picture of the work environment at the Toronto call centre and were not reflective of the "on the ground" experience of TSAs. In my view, these assertions by the Applicant are unsubstantiated. The Committee found that the information received from management was consistent with the Applicant's submissions. The management representative indicated that: there are different tiers among employees in the SP0465 position; calls are assigned to employees based on their experience and training; different employees have different levels of knowledge and expertise and are therefore assigned different types of calls; and some TSAs handle CoE and non-resident tax matters. It was reasonable, in view of the foregoing, for the Committee to conclude that: "The information received from management does not contradict the system for tiers 1, 2 and 3, or the workload assignment between agents on job SP-0465, as described in the work description."

[33] The Applicant further contends that the Committee's use of the rating grid in the Standard was not reasonable because it is a flawed tool, one which is inconsistent with the intent and purpose of the Standard, and that the Standard is just a guide and not a scientific tool. The Respondent maintains that the Committee's use and application of the Standard was reasonable since it assessed each element of the work description as written by using the guiding principles in the Standard and selecting the most appropriate degree.

[34] Before the Committee, the Applicant advocated that the points allocated for six of the 12 elements in the Standard should be increased by five percent. The Committee, however, deemed that the Applicant's proposed method to assess new point ratings for certain elements was "inadmissible" because its mandate was to determine the appropriate classification by applying the approved and current classification standards. The Committee's decision to classify the position using the Standard and its rating grid was reasonable, if not required in the circumstances of this case. The Standard does not permit the Committee to arbitrarily increase point values, nor does it indicate that the Committee can deviate from the rating grids. The Committee does not have discretion to select a quantum of points that does not correspond with a particular degree. Instead, the Committee must determine the appropriate degree for each element by analysing the various guidelines. The Standard is designed to allow evaluators, including the Committee, to evaluate the classification for a job in a consistent manner.

V. Conclusion

[35] In conclusion, the decision denying the Applicant's classification grievance is reasonable and defensible in respect of the facts and the law and falls within the range of acceptable

outcomes. Moreover, the decision was rendered in a procedurally fair manner; neither the Committee nor the Assistant Commissioner failed to observe any principle of natural justice.

[36] The Applicant's application for judicial review is therefore dismissed with costs payable by the Applicant to the Respondent in the fixed lump sum amount of \$1,000.00 (inclusive of any taxes and disbursements).

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed with costs payable by the Applicant to the Respondent in the fixed lump sum amount of \$1,000.00 (inclusive of any taxes and disbursements).

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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