Date: 20070319

Docket: T-2170-05

Citation: 2007 FC 293

Ottawa, Ontario, the 19th day of March 2007

Present: The Honourable Mr. Justice Blais

BETWEEN:

ROGER GROULX

Applicant

and

MARCEL CORMIER
and
ATTORNEY GENERAL OF CANADA
and
DEPARTMENT OF VETERANS AFFAIRS CANADA
and
PUBLIC SERVICE HUMAN RESOURCES MANAGEMENT AGENCY OF CANADA

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review filed under section 18.1 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, against a decision dated November 3, 2005, of Marcel Cormier, Director General of Human Resources, Veterans Affairs Canada, in his capacity as the Deputy Head's Nominee for Classification Grievances. In this decision, Mr. Cormier notified the applicant that he had accepted the recommendation of the Classification Grievance Committee to maintain the

classification of the applicant's position at the HS-HDO-04 level, thereby dismissing the applicant's classification grievance (DVA-2005-00003).

RELEVANT FACTS

[2] During the relevant period, Roger Groulx (the applicant) held a position as a computer and maintenance storesperson in the Department of Veteran Affairs at Ste. Anne's Hospital.

[3] On February 21, 2005, the applicant received an update of his work description and the results of a re-evaluation of his classification for this position, which was maintained at the HS-HDO-04 level.

[4] As stated in the Treasury Board Secretariat's Classification System and Delegation of Authority Policy, the level of a position within the federal public service shall be established by the evaluation of the work description for that position through the use of the appropriate classification standard as determined by the relevant occupational group definition for that standard. In practice, each position must first be assigned to a specific occupational group. The position is then assessed on the basis of a list of criteria, and a degree is awarded for each criterion by means of a comparison with certain benchmark positions. Each degree corresponds to a certain number of pre-determined points, and the classification level is established by adding up the points obtained under each criterion.

[5] On March 18, 2005, the applicant filed a grievance seeking a reclassification of his position according to the GS classification standard, in compliance with the 1991 decision of the Human Rights Tribunal.

[6] The GS (General Services) classification standard applies to the evaluation of HS (Hospital Services) positions, according to the Treasury Board directive dated November 5, 1991, implementing the decision of the Human Rights Tribunal in *Public Service Alliance of Canada v. Treasury Board*, [1991] D.C.D.P. No. 4.

[7] Following the filing of the applicant's grievance, a Grievance Classification Committee (the Committee) was appointed under Section V(c) of the Treasury Board's Classification Grievance Procedure. The Committee was made up of a chairperson, Yvon Forest, a classification consultant with at least 20 years of experience in the field of classification in the federal public service; Bernard Groulx, a classification grievance adviser in the Public Service Human Resources Management Agency of Canada; and Julie Gadoury, a department head at Ste. Anne's Hospital who was not involved in supervising the applicant.

[8] On September 8, 2005, the applicant submitted his arguments to the Committee for a reclassification at the HS-HDO-08 level. The applicant contested the score given when the classification level was reassessed for the factors "Knowledge and Judgment", "Specific Vocational Training", "Resources and Services", "Safety of Others" and "Supervision".

[9] After analyzing all the factors, the Committee concluded that the applicant's position should be classified at the HS-HDO-04 level. The Committee considered the applicant's main arguments but concluded that they did not warrant a higher classification level. The Committee did not consult with management to obtain additional information but stated that it relied solely on information provided by the applicant, the applicant's official work description and the applicable GS standard.

[10] In a letter dated November 3, 2005, the Deputy Head's Nominee for Classification Grievances concluded that a detailed evaluation of the position in question had been made and that the Committee's recommendations reflected a fair and balanced application of the classification standard in question.

ISSUES

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

(1) Did the Committee breach a principle of natural justice or procedural fairness?

(2) Did the Committee make a reviewable error in its reasons?

(3) Did the Committee err in its application of the questions concerning the right to pay equity?

STANDARD OF REVIEW

[12] On the issue of the standard of review applicable to a decision of a classification grievance committee tasked with ruling on the merits of a classification grievance, I agree with the analysis made by Mr. Justice Michael L. Phelan in *Adamidis v. Canada (Treasury Board)*, 2006 FC 243, [2006] F.C.J. No. 305 (QL), of which I reproduce paragraphs 18 to 24:

¶ 18 In large measure, I adopt Justice Blanchard's analysis of the applicable standard of review of decisions of a classification committee in *Trépanier v. Canada(Attorney General)*, [2004] F.C.J. No. 1601; 2004 FC 1326. In that case, Justice Blanchard found the standard of review to be patent unreasonableness in respect of the calculation of a deadline to be met.

¶ 19 With respect to the existence and nature of a private clause, s. 96(3) of the *Public Service Staff Relations Act* (Act) provides:

> 96. (3) Where a grievance has been presented up to and including the final level in the grievance process and it is not one that under section 92 may be referred to adjudication, the decision on the grievance taken at the final level in the grievance process is final and binding for all purposes of this Act and no further action under this Act may be taken thereon.
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> ***
>
> 96. (3) Sauf dans le cas d'un grief qui peut être renvoyé à l'arbitrage au titre de l'article 92, la décision rendue au dernier palier de la procédure applicable en la matière est finale et obligatoire, et aucune autre mesure ne peut être prise sous le régime de la présente loi à l'égard du grief ainsi tranché.

¶ 20 While this may not be the strongest privative clause, it does indicate an intention to curtail further review to some extent and to ensure that a grievance decision is final and binding.

¶ 21 Of greater importance in this case are the other three factors in the pragmatic and functional analysis - expertise, purpose of legislation and its relevant provision, and nature of the question.

¶ 22 If the calculation of a deadline is a purely factual matter requiring expertise, as found in *Trépanier*, then the actual application of the classification system is even more a matter of expertise. It required expertise in classification, and a thorough knowledge of the policies, procedures and organization of government employees and their functions.

¶ 23 The purpose of the legislation is polycentric “as it is intended to resolve questions involving contradictory policy

> objectives or interests of different groups, and its purpose is not just to oppose the government to the individual".
>
> ¶ 24 As to the fourth factor, the nature of the question is somewhat less factual than the calculation of a deadline but in this case it actively engages factors two and four together. The weighting of job functions includes knowledge of the facts of each function. More importantly, the selection of comparators is an area of expertise (much as would occur in a commercial appraisal case) and one based on expert evidence which established matters of fact. The question being asked by the Applicants is whether the Committee carried out its selection, weighting and analysis properly. This is a matter deserving of considerable deference at the patent unreasonable level of review. (See *Laplante v. Canada(Canadian Food Inspection Agency)*, [2004] F.C.J. No. 1640; [2004] FC 1345.)

[13] The standard of review applicable to the decision of the Committee is therefore that of patent unreasonableness. Accordingly, the Court must consider the Committee's decision as a whole and intervene only if the applicant shows that the decision was based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[14] However, if the Court concludes that there was a breach of procedural fairness, the application for judicial review will be allowed, because it is well established that the standard of review applicable to issues of natural justice and procedural fairness is that of correctness (*Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539, at paragraph 100).

ANALYSIS

(1) Did the Committee breach a principle of natural justice or of procedural fairness?

[15] The applicant alleged that the rules of procedural fairness and of natural justice were not respected by the Committee. From this point of view, he claimed that the Committee definitely

considered evidence concerning his supervisory responsibilities, which it obtained without his knowledge and which he did not have an opportunity to contradict.

[16] The respondent submitted that there was no breach of the principles of natural justice and of procedural fairness and submitted as evidence of this the affidavit of Bernard Groulx, a member of the Committee, who confirmed that the Committee used only information given by the applicant, and that the issue of the degree of supervision had been dealt with at the hearing. Because Bernard Groulx had not been cross-examined on his affidavit, and in the absence of any other evidence on record about this question, the respondent submitted that the Court had no reason to doubt the veracity of his statement, and therefore the respondent's argument must be rejected.

[17] First of all, it is important to determine the scope of the duty of procedural fairness in the context of a decision of a classification grievance committee. The Federal Court dealt with this issue in *Chong v. Canada (Attorney General),* (1995), 104 F.T.R. 253, [1995] F.C.J. No. 1600 (QL). At paragraph 40 of this decision, Mr. Justice William P. McKeown concluded as follows:

> ¶40. In my view, the case before me involves an administrative decision as opposed to a judicial or quasi-judicial decision and, therefore, the applicants are only entitled to a minimum level of fairness. The applicants submitted that they were entitled to know the case against them and to have an opportunity to make representations in respect of that case and to be informed of the decision. The applicants submit that they did not receive the first two. In my view, there is no case to be met in the case before me. Management is entitled to detail the description of the job. Parliament has specifically recognized this by excluding classification grievances from the adjudication procedures. The onus is on the applicants to make the case that the classification was wrong. In my view, the procedures provided by the Treasury Board here meet the requirements of fairness as set out by Sopinka J. in *Prassad, supra*. The grievors are given an opportunity to be heard. There is no restriction on their participation. They are provided with all the

> material from the departmental classification committee. Management is not permitted to argue for or against the classification selected. Management is only permitted to answer such questions as may be directed to it by the committee. It is not an adversarial process and, therefore, it is appropriate that both the grievors and management should answer questions in the absence of the other . . . .

[18] In *Chong v. Canada (Attorney General)* (1999), 236 N.R. 371, [1999] F.C.J. No. 176 (QL), the Federal Court of Appeal confirmed that the content of such a committee's duty to act fairly is "somewhere in the lower zone of the spectrum".

[19] Therefore, the respondent is right in stating that there is well established case law to the effect that the nature of the process before the Committee tends to indicate a lower level of procedural guarantees. These guarantees are limited to the applicant's right to have his main arguments considered by the Committee and to be advised of information crucial to the case and of which he could not reasonably have knowledge.

[20] At the teleconference on September 8, 2005, the applicant was accompanied by his legal adviser. He had the opportunity to file written arguments, namely a 21-page document entitled [TRANSLATION] "Arguments for the Classification Grievance", together with 28 appendices, and to make oral submissions. In its deliberations, the Committee considered the official work description as well as the applicant's submissions. In its decision, the Committee summarized the applicant's presentation and then considered each one of the evaluation factors individually in relation to the benchmark position descriptions to determine the appropriate degree and the number of corresponding points. Following this analysis, the Committee concluded that the classification of the position should be maintained at the HS-HDO-04 level. In fact, the Committee stated that

[TRANSLATION] “the scores represent a fair application of the classification standard for Operational Services and are in harmony with departmental relativities for positions within the same group”.

[21] The Classification Grievance Procedure issued by the Public Service Human Resources Management Agency of Canada states that the complainant and/or the complainant’s representative must have the opportunity to submit a presentation in person or in writing. However, there is no provision in the Procedure giving management the opportunity to make such a presentation. A management representative must simply be available to answer the Committee’s questions.

[22] In his affidavit, Bernard Groulx affirmed that [TRANSLATION] “the members of the Committee did not have to obtain and did not obtain information from management for the purpose of processing the grievance of Roger Groulx”. Although the Court is not required to accept affidavit evidence merely because the affiant has not been cross-examined, a presumption of credibility nevertheless exists (*Bath v. Canada*, [1999] F.C.J. No. 1207 (QL), at paragraphe12). In addition, it is important to note that if the Committee was not convinced by the arguments submitted by the applicant, then logically it was not necessary for the Committee to question the employer, because as affirmed by McKeown J. in *Chong*, *supra*, the burden of proving that the classification was erroneous rested with the applicant.

[23] In short, the applicant had the right to a hearing before an impartial and expert decision-maker, who rendered a detailed decision based on his arguments and on the official work description which he was familiar with and accepted. Therefore, the Committee rejected the

applicant's allegations about his supervisory responsibilities on the basis of information of which he was aware.

[24] Accordingly, I must conclude that the applicant's right to procedural fairness was respected by the Grievance Classification Committee.

(2) *Did the Committee make a reviewable error in its reasons?*

[25] In his memorandum, the applicant submitted a detailed analysis of the five contested factors in order to show that the Committee made a mistake in its evaluation. He reiterated the evidence submitted to the Committee and basically stated that if the Committee was not convinced by this evidence, it was because the Committee members had received additional evidence that was unknown to the applicant. In the alternative, the applicant submitted that the Committee's erroneous decision shows that the members did not have the competency and the knowledge of the classification system necessary for the performance of their duties.

[26] The respondent submitted that the Committee's decision was not patently unreasonable. The respondent noted that it is not up to the Court to redo the Committee's analysis, because assessing the evidence was the role of the Committee, which had to rely on the content of the work description after having confirmed that it was accurate, rather than on external evidence which contradicted this document. According to the respondent, nothing in the Committee's analysis shows that it was unaware of or refused to acknowledge the applicant's tasks under the work description. The Committee's analysis concerned, as it should have, the weight attached to these

tasks in relation to the various benchmark positions provided for comparison purposes in the classification standard. Accordingly, the applicant did not discharge his burden of showing the unreasonableness, let alone the patent unreasonableness, of the Committee's decision.

[27] Having thoroughly analyzed every detail of the Committee's decision and the parties' submissions, I essentially agree with the respondent's position to the effect that the applicant did not succeed in showing that the Committee's decision was patently unreasonable. Having said this, I do not intend to conduct a detailed analysis of this decision to answer every one of the applicant's allegations. I am of the opinion that the only aspect which is really worthy of attention, because it was pivotal in the Committee's decision, was the controversy concerning the number of employees supervised by the applicant and its impact on the decision.

[28] In his written submissions to the Committee, the applicant stated that he could supervise up to eight employees and that the scope of his supervisory responsibilities were more in keeping with the description of supervision tasks at Degree C rather than Degree B. However, the Committee concluded that the applicant's position supervised only one employee at the HS-HDO-03 level and that he was called on to supervise the other employees only when his own supervisor was absent. Therefore, the Committee did not take the applicant's allegations into consideration, since occasional supervision is not scored, and it proceeded to compare this position with the benchmark positions. Accordingly, the Committee concluded that the applicant's supervisory responsibilities were not equivalent to those of the benchmark positions at Degree C.

[29] As mentioned in the Committee's decision and in the affidavit of Bernard Groulx, the Committee confirmed the work description's accuracy with the applicant, that is, that this work description truly reflected all the activities performed in the course of his work. In his affidavit, the applicant confirmed that he did not contest the content of his work description. Under the heading "Key Activities", it was specified that the applicant's supervisory tasks included the following:

> [TRANSLATION]
> Supervises the work performed by staff, determines work priorities, distributes and assigns the work of a stores attendant (HS-HDO-03); motivates staff, defines expectations, appraises performance and offers constructive feedback; trains staff (employees and/or students).

Under the heading "Leadership of Human Resources", the applicant's tasks were described as follows:

> [TRANSLATION]
> Supervises the work performed by staff; assigns work and establishes priorities and schedules; assign the work of a stores attendant (HS-HDO-03); appraises performance and participates in determining training needs; conducts follow up to ensure that staff members perform their work appropriately. Participates in maintaining an effective and healthy work environment, maintains the morale of staff members in their functions and motivates them. Participates in the selection and hiring of new employees. This responsibility is shared.
>
> Orients and trains new staff members; demonstrates work procedures and trains staff members in safety practices and the safe handling of materials and equipment such as lift trucks, hand trucks; explains to employees work practices and procedures concerning the standards applicable in the sector. Promotes and ensures the occupational health and safety of staff members, for example, by providing information about occupational health and safety, including WHMIS. This responsibility is shared.

[30] The Court also notes that the applicant submitted, in an annex to his written submissions to the Committee, the official organization chart of the Financial and Material Resources Directorate at

Ste. Anne's Hospital. This document shows that there were in fact three HS-HDO-03 positions reporting to an employee at the HS-HDO-04 B2 level, namely, the applicant. Therefore, contrary to the applicant's allegations, this organization chart does not establish that he supervises eight employees either. That being said, the applicant submitted a different organization chart as an annex to his affidavit, which shows eight positions at the HS-HDO-03 level reporting to two employees at the HS-HDO004 B2 level, namely, the applicant and another employee. However, it is important to note that this second organization chart had never been submitted in evidence before the Committee.

[31] If the Committee had ignored clear evidence that the applicant supervised eight employees to determine that he in fact supervised only one employee, it would perhaps be appropriate to conclude that the Committee's decision was patently unreasonable. However, in the present situation, the applicant's official work description referred to only one employee at the HS-HDO-03 level and mentioned shared responsibility, whereas the organization chart appeared to show perhaps three HS-HDO-03 positions reporting to the applicant's position. In addition, the applicant admitted on cross-examination that there were two positions at the HS-HDO-04 level to which employees of his group at the HS-HDO-03 level reported, which indicates a shared supervisory role. In his affidavit, Bernard Groulx affirmed that the applicant had told the Committee that [TRANSLATION] "he occasionally supervised other employees, depending on the workload".

[32] At worst, the Committee erred by ignoring the information in the organization chart submitted by the applicant, which appears to show that he supervised three employees. However, considering the applicant's exaggerated statements to the effect that he [TRANSLATION] "most definitely" supervised eight employees, and his admission to the effect that this supervision was

shared and occasional, it was not unreasonable for the Committee to base its decision on the applicant's official work description. Likewise, it was not unreasonable for the Committee to conclude that the applicant's supervisory or oversight duties were rather restricted and that his position could not be compared in this respect with that of a foreperson who leads teams made up of numerous employees and whose key function is supervision.

[33] The applicant also stated that he could have adduced evidence before the Committee to the effect that his supervisor had been on extended sick leave since the year 2000, and that therefore he assumed considerably more supervisory responsibilities than was mentioned in his work description. On this point, it is important to note, once again, that the applicant confirmed the accuracy of his job description, so it is too late to contest it. In addition, the fact that the Committee was unaware of evidence that was not submitted to it cannot render the decision patently unreasonable.

[34] In *Adamidis v. Canada (Treasury Board),* [2006] F.C.J. No. 305 (paragraph 29), Mr. Justice Michael L. Phelan considered the question of whether or not a decision of the Grievance Classification Committee was patently unreasonable and made the following conclusion:

> In essence, the Applicants have a simple disagreement with the Committee's analysis and conclusions. There is no basis for concluding that the Committee misapprehended positions or relevant evidence. This disagreement is insufficient grounds to warrant Court review of the decision . . . .

[35] In my view, such a conclusion is just as appropriate in the case at bar. It is clear that the applicant does not agree with the analysis and the assessment of the evidence by the Committee. The respondent is right in stating that it is not the role of the Court to reassess the evidence. The

burden is rather on the applicant to show the Court that the Committee erred to such an extent that its decision was patently unreasonable. He did not discharge this burden.

> ***(3)*** *Did the Committee err in its application of the questions concerning the right to pay equity?*

[36] The applicant also stated that the Committee did not respect the decision of the Human Rights Tribunal in *Public Service Alliance of Canada v. Treasury Board*, *supra*, concerning the right to pay equity and thereby perpetuated discrimination.

[37] Such an argument goes against the statement made by the Committee, which declared in its report that it had complied with the Treasury Board directive dated November 5, 1991. In addition, in his affidavit, Bernard Groulx confirmed that the Committee had applied the GS standard, as required by this directive, to identify the benchmark positions for the purposes of its analysis.

[38] On this point, I agree with the submission of the respondent to the effect that, in applying the GS classification standard to the applicant's position, it could not have discriminated against the applicant as alleged, and that this argument is therefore unfounded. As mentioned by the respondent, the Committee did not have any jurisdiction concerning pay equity other than applying the GS classification standard, because issues concerning pay equity cannot be subject to a grievance under section 208 of the *Public Service Labour Relations Act*, S.C. 2003, c. 22, section 2, which provides as follows:

208. . . .	**208. . . .**
(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.	(2) Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.
(3) Despite subsection (2), an employee may not present an individual grievance in respect of the right to equal pay for work of equal value.	(3) Par dérogation au paragraphe (2), le fonctionnaire ne peut présenter de grief individuel relativement au droit à la parité salariale pour l'exécution de fonctions équivalentes.

[39] For all these reasons, the application for judicial review must therefore be dismissed.

ORDER

1. The application for judicial review is dismissed;

2. With costs to the respondent.

"Pierre Blais"

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	T-2170-05

STYLE OF CAUSE:

ROGER GROULX

Applicant

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Respondent

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DATE OF HEARING:	March 5, 2007
REASONS FOR JUDGMENT AND JUDGMENT BY:	The Honourable Mr. Justice Blais
DATED:	March 19, 2007

APPEARANCES :

Gaétan Couturier	FOR THE APPLICANT
Stéphane Hould	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Gaétan Couturier Montréal, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENTS