Federal Court		Cour fédérale

Date: 20080213

Docket: T-208-07

Citation: 2008 FC 186

Ottawa, Ontario, the 13th day of February 2008

Present: the Honourable Mr. Justice de Montigny

BETWEEN:

COLOMBE BEAUCHEMIN

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant has been a pay and benefits manager in the human resources operations division at the Quebec operations centre of the Canadian Food Inspection Agency (CFIA) since March 1998. On November 27, 2006, Natalie Harrington, acting vice-president of Human Resources, handed down a decision dismissing the applicant's classification grievance. Although the applicant is contesting, by this application for judicial review, the grievance committee's "decision", it was essentially only a recommendation to the person delegated by the deputy head to resolve classification grievances. Thus it is Ms. Harrington's decision to confirm the committee's

recommendation that is, technically, the subject of this judicial review. For the following reasons, I have concluded that the decision must be upheld.

I. Facts

[2] The applicant has been in the federal government's employ since 1973 and has worked in several departments in the pay and benefits area. She has held a managerial position at the AS-04 level at the CFIA since March 1998.

[3] In 2002, the applicant asked the CFIA to update her job description. On December 6, 2004, the CFIA presented her with a revised job description. The applicant then submitted this job description to an interdepartmental classification committee for assessment. During this process, the applicant's manager indicated, *inter alia*, that the incumbent must advise senior management of the operations centre and human resources management regarding the compensation program, as mentioned in her job description.

[4] The classification committee concluded, in September 2005, that the applicant's position was one of group and level AS-04. This decision was communicated to the applicant on October 4, 2005.

[5] On October 31, 2005, the applicant and two of her co-workers (one in Ontario and the other in Alberta) filed a classification grievance requesting an AS-05 classification of their position. A hearing was held on October 6, 2006 during which the applicant's representative put forward the

reasons for which a reclassification was requested and submitted numerous documents supporting her claims. In particular, he filed job descriptions for 25 pay manager positions in the public service of Canada as well as the job descriptions for two positions at the CFIA, that of [TRANSLATION] "training and organizational development coordinator" and that of [TRANSLATION] "facilities manager". Then, on October 26, the committee met with two management representatives, in the absence of the applicant and her representative, in accordance with the [TRANSLATION] *Classification Grievance Procedure* in effect at the CFIA. Based on all of the information obtained, the committee recommended, on November 27, 2006 that the applicant's grievance be dismissed, a recommendation which was confirmed by the deputy head's delegated representative.

II. Impugned decision

[6] To assess the positions of the applicant and of her co-workers, the committee had to follow the Classification Standard – Administrative Services (AS). It provides that four factors are to be used in determining the relative values of jobs: knowledge (education, experience and continuing study), decision-making (scope and impact), responsibility for contacts (nature of contacts and persons contacted) and supervision (number and level of employees supervised). A minimum and a maximum value are attributed to each of these factors depending on their relative importance. This standard also includes descriptions of sixteen bench-mark positions which serve as examples for the various degrees of each of the factors to be considered.

[7] The Committee, consisting of three members, first met on October 6 to hear the applicant's submissions (through her counsel, Mr. Bergeron) and those of her two co-workers. Then the Committee met again on October 26 to ask questions of two management representatives.

[8] It appears from the summaries of these meetings in the Committee's report that Mr. Bergeron asserted that the assessment of the "knowledge" and "decision-making" factors should be reviewed, and emphasized the extent of the responsibilities assigned to the position in question as well as the requirements attached thereto. While acknowledging the operations manager's responsibility to provide sector heads with operational and strategic advice on compensation, he stressed the fact that it often falls to the person holding the position in question to perform this function since the operations manager is a generalist in the area of human resources.

[9] As for the management representatives, they were invited to meet with the Committee to provide explanations with respect to the complainants' assertions with regard to the role of compensation policy officers and more precisely with regard to their responsibilities with respect to compensation and the provision of advice and guidance to the operations centre's managers. They acknowledged that the person holding Ms. Beauchemin's position might have to provide specialized advice to senior management or accompany the senior manager to meetings to discuss compensation plans and issues, [TRANSLATION] "even though that is not a regular requirement".

[10] After having reviewed and weighed all the documentation and information before it, the Committee agreed that the three positions scored a total of 463 or 483 points. The 20-point spread

can be explained by the number of employees supervised; although the Committee does not specify, it appears that the applicant's position was assessed at 483 points. Since the standard provides that a total of between 401 and 500 points is equivalent to an AS-04 position, the Committee recommended that the positions which were the subject of the grievance not be reclassified.

[11] The Committee acknowledged from the start that there was a lack of uniformity in the evaluations of regional compensation managers within the public service, hence the importance of applying the Classification Standard – Adminstrative Services correctly.

[12] With regard to the "knowledge" factor, the members of the Committee noted that there was no dominant trend as regards the "education" element in the public service and decided to raise the mark slightly to take into account the fact that greater experience and more advanced knowledge are required because the organization is an Agency. As for the "impact of decisions" element, the Committee reviewed the responsibilities contained in the job description of the position in question and their repercussions to determine their relevance in relation to the bench-mark positions and their relative value in relation to regional compensation manager positions in the public service as a whole. It was first noted that it is normal for regional pay and benefits managers to take part in the development of policies, guidelines, directives and bulletins since they are part of an integrated team. It was also concluded that the specialized advice they might provide to the senior management of the operations centre was not a permanent requirement. The Committee also took into account the client base served by the positions in question, as well as the training and support provided.

[13] Finally, the members of the Committee indicated that they had reviewed the relative value of the regional compensation manager positions by looking at the job descriptions supplied by Mr. Bergeron and the reports from the Position and Classification Information System. While it was agreed that there were a few similarities between the position in question and certain positions classified AS-05, differences were also pointed out which justified a different mark: the context of the work, the obligation to fulfill certain responsibilities at the organizational level, the size of the client base, and the centralization or decentralization of the compensation function. Conversely, many positions classified AS-04 are very similar to the positions of CFIA regional pay and benefits managers.

[14] As for the latest report from the Position and Classification Information System, a review thereof indicates that similar positions, serving a similar client base and having similar responsibilities, are for the most part classified AS-04. Positions at the AS-05 level are in larger departments. From that, the Committee concluded that the relative value of similar regional compensation manager positions in departments of similar size justifies an assessment at the AS-04 level.

[15] As for the internal relative value, the applicant wanted the Committee to review the Agency’s training and development coordinator position. However, it turned out that the job description for that position was not up to date and that the reason had never been approved. As for

the other position within the CFIA that the applicant had submitted for comparison purposes, namely that of facilities manager, the Committee said nothing about it.

[16] On the basis of all the information from both parties, the Committee therefore concluded that given the complexity of the tasks of the position in question and the impact of its advice, decisions and recommendations, a grade of 2 (moderate) for the element "impact" was justified. The members of the Committee were of the view that a grade of 3 (extensive) was not justifiable for this element, considering the relative value of this position compared with the bench-mark positions.

III. Issues

[17] The applicant submitted several arguments in support of her application for judicial review. After thoroughly reviewing the file and hearing the parties, it seems to me that they can be grouped under the following three headings:

(A) Did the Committee fail to consider all the relevant facts? More specifically, did the Committee err in not taking into account the only two comparable positions within the CFIA, without providing an explanation with regard to one of them and giving as a pretext for the other that its job description was not up to date?

(B) Did the Committee fail to follow the [TRANSLATION] *Classification Grievance Resolution Procedure*, by meeting with two management representatives rather than one and in preferring their opinions to the job description of the position in question?

(C) Did the Committee breach the principles of procedural fairness by consulting the Position and Classification Information System without informing the applicant and without allowing her to submit reply evidence?

IV. Analysis

[18] There is no difference of opinion between the parties as to the applicable standard of review. To the extent that the issues raised in the present dispute consist in determining if the Committee considered all of the evidence adduced and whether its assessment of this evidence was incorrect, the applicable standard of review is undeniably that of patent unreasonableness. Indeed, that is what this Court has concluded on numerous occasions in recent years: see, for example, *Adamidis* v. *Canada (Treasury Board)*, 2006 FC 243; *Laplante* v. *Canada (Canadian Food Inspection Agency)*, 2004 FC 1345; *Trépanier* v. *Canada (Attorney General)*, 2004 FC 1326; *Utovac* v. *Canada (Treasury Board)*, 2006 FC 643; *Lapointe et al.* v. *Canada (Treasury Board)*, 2004 FC 244.

[19] The *Public Service Labour Relations Act* (S.C. 2003, c. 22) contains, at section 214, a privative clause making decisions at the final grievance stage “final and binding”. While this privative clause is not absolute, it nonetheless is evidence of the will of Parliament to limit recourse to common law courts.

[20] Furthermore, the Classification Grievance Committee performs highly specialized functions and possesses expertise in matters of classification, an area which does not fall under the particular expertise of this Court. As emphasized by Phelan J. in *Adamidis, supra,* “It required expertise in

classification, and a thorough knowledge of the policies, procedures and organization of government employees and their functions" to apply the classification system. That calls for a high degree of deference.

[21] Thirdly, the purpose of classification is to achieve a form of parity among the job assessments of a given employer. It is a delicate balancing exercise that consists in reconciling various interests rather than establishing the rights of the parties. It can thus be said that the aim of the Act is polycentric, "as it is intended to resolve questions involving contradictory policy objectives or the interests of different groups, and its purpose is not just to oppose the government to the individual." (*Trépanier* v. C*anada (Attorney General), supra*, paragraph 23).

[22] Finally, the type of issue that comes before the Committee, namely the comparison of duties performed, of the group and the level of each position, and the numerical value assigned to each factor, is eminently factual. The *Federal Courts Act* (R.S.C. 1985, c. F-7) stipulates at paragraph 18.1(4)(*d*) that the Court shall only intervene on a question of fact if the impugned decision [of the federal board, commission or other tribunal] is "based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it".

[23] In light of these four contextual factors, I have no choice but to apply the patently unreasonable standard. This standard calls for a very high degree of deference and authorizes the Court to intervene only in cases where a decision is "clearly irrational" or "contrary to reason": *Canada (Attorney General)* v. *Public Service Alliance of Canada* [1993] 1 S.C.R. 941, at p. 963;

Canada (Director of Investigation and Research) v. *Southam Inc.*, [1997] 1 S.C.R. 748, at paragraph 57.

[24] This analysis does not apply however to the applicant's arguments based on an apparent violation of the principles of procedural fairness. It is up to the Court to define the extent of the obligation to act fairly in the circumstances of each case, and, in this regard, the administrative decision-maker does not have the right to err.

[25] That being said, we must never lose sight of the fact that the obligation to act fairly will be more or less extensive depending on the nature of the interests affected by the decision and the nature of the procedure in question. In the context of a classification grievance resolution, this Court and subsequently the Court of Appeal found in *Chong* v. *Canada (Treasury Board)*, [1995] F.C.J. No. 693 (F.C.), [1999] F.C.J. No. 176 (F.C.A.) that the degree of fairness required lies on the side of a "lesser requirement" rather than that of a stricter standard. There will however always be inescapable obligations, including the following:

> . . . when the committee decides to review an aspect of the classification assessment, which the employee did not think was in dispute, and decides to elicit and rely on evidence with respect thereto about which the employee had no notice or information, fairness requires that that information be disclosed to the employee and he be given an opportunity to comment thereon . . .
>
> *Hale v. Canada (Treasury Board)*, [1996] 3 F.C. 3, at p. 16, repeated with approval by the Federal Court of Appeal in *Chong*, *supra*, at paragraph 13.

(A) Did the Committee fail to consider all the relevant facts?

[26] As mentioned previously, the applicant claimed that the Committee should have taken into account the two managerial positions within the CFIA that her representative had submitted to it for purposes of assessing the "impact of decisions" aspect of her position. She points out that this aspect of the assessment is graded C2 and given 209 points for each of these two positions, while the impact of decisions made in the context of her duties is graded B2 and given only 163 points.

[27] The applicant is entirely correct in claiming that internal relativity is just as important as comparison with the bench-mark positions in the classification standards. In *Chong, supra,* McKeown J. wrote in this connection (at paragraph 45):

> In my view the Classification Standard is not limited to comparing the grievors' positions with bench-mark positions. The Classification Standard states that the "ultimate objective of job evaluation is to determine the relative value of positions in each occupational group. The relation of the position being rated to positions above and below it in the organization is also studied." The grievors submit that the closest job description to the B.C./Yukon one is the one for the Ontario job description and, accordingly, although it was not a bench-mark position, the committee was bound to consider why a different classification should be assigned to the B.C./Yukon position.

[28] It must be said that in *Chong*, the descriptions of the two positions that had not been considered were nearly identical to that of the position that was the subject of the grievance. In fact, the position whose classification was being contested had served as a model for the description of the position subsequently classified at a higher level. The same cannot be said in this case. The two internal positions submitted by the applicant's representative for the Committee's review have nothing in common with human resources, and even less with compensation. Even though the classification exercise allows for comparison with jobs which *a priori* have little in common, it

remains true that compensation managers' positions within other departments and agencies of the public service were more relevant for the purpose of assessing the applicant's position fairly.

[29] As regards more particularly the position of facilities manager, it is true that the Committee did not explicitly discuss it in its report. However, the Committee did indicate that it had reviewed all of the documentation and information that had been submitted to it. What is more, the respondent is entirely correct in claiming that there is no legal obligation to set out every piece of evidence, every question raised by the parties or every conclusion that led to the decision: *Jarvis* v. *Canada (Treasury Board)*, 2004 FC 300, at paragraph 5.

[30] As for the position of coordinator of training and organizational development, the Committee decided not to take it into account for the reason that its job description was not up to date. In my view, that was a consideration that the Committee was totally justified in weighing in assessing the relative value of the positions within the Agency.

[31] It is true that the Committee seems to have obtained this information from Candida Lourenço, who had acted as an observer at the time of the first classification decision in September 2005. However I do not see how this could have prejudiced the applicant. For one thing, Ms. Lourenço was not a member of the interdepartmental classification committee that made an initial assessment of the position in September 2005, and no attempt was even made to show that she was in a position of conflict of interest. Thus, there was no breach of the Agency's *Classification Grievance Procedure*, of which item VII (A) (5) provides that [TRANSLATION] "no

member of the committee may have participated in the classification decision which is the subject of the grievance, supervise directly or have supervised the position in question, or be in a position of potential conflict of interest".

[32] Moreover, during cross-examination, Gisèle Duford, chair of the Committee, revealed that Ms. Lourenço merely passed on the relevant documentation to the Committee and confirmed that the position was to be reviewed and reevaluated. She did not participate in the Committee's deliberations, nor did she discuss the assessment of the position in question. The information transmitted was purely factual and simply corroborated what, in any event, could be seen in the file itself. Besides, it was not explained to me how the applicant might have been prejudiced by not having been able to make representations in this regard. In any case, this position was far removed from the duties performed by the applicant and could only have a very limited impact on its classification; in this regard, it is interesting to note that Ms. Beauchemin's representative himself alluded very little to it, at least in his written representations to the Committee.

[33] For all these reasons, I am of the view that the Committee did not commit a patently unreasonable error in assessing the applicant's position. Its decision is comprehensive and is based on all of the documentation that was before it, including the job descriptions submitted by the applicant's counsel. The applicant stressed two positions within the Agency whose similarities with the duties she performs are tenuous to say the least, and paid little heed to the thorough analysis that the Committee made of the other 25 bench-mark positions that she also submitted through her representative at her grievance hearing.

[34] This Court must refrain from intervening where the Committee's decision is based on the evidence adduced, in spite of the fact that it might have arrived at a different conclusion. The members of the Committee possess great expertise in the area of classification, and a high degree of deference must be shown in reviewing their decisions. While the applicant's disappointment is understandable, that cannot constitute sufficient reason to set aside a structured and reasoned decision made at the conclusion of a hearing during which her representative was able to put forth all the reasons and file all the evidence in support of her grievance.

(B) Did the Committee fail to follow the Classification Grievance Resolution Procedure?

[35] The applicant also argued that the Committee had contravened the Agency's *Classification Grievance Resolution Procedure* by meeting with two management representatives rather than only one and in preferring their opinions to her job description. These claims seem to me to be unfounded for the following reasons.

[36] During the grievance hearing, the applicant had invited the Committee to meet with Claudia Pasteris-Sayegh, her supervisor, and Yvon Bertrand, the Agency's executive director for the Quebec region, for the purpose of illustrating the tasks and duties that the applicant must perform as well as their frequency of execution. But the Committee preferred to meet with Lyne Caissie, collective agreements and compensation administrator, and Monica Surrett, compensation policy officer, both stationed in Ottawa. In her affidavit, Gisèle Duford explained this choice by indicating that the Commitee was seeking clarification of certain assertions made by the applicant's representative, in

particular on the role of compensation policy officers and more precisely on their responsibilities concerning compensation. More specifically, the Committee wished to obtain information on the administration of the compensation program at the Agency level as opposed to its administration at the regional level.

[37] It is clear, upon reading the *Classification Grievance Procedure,* that the choice of management representatives is the Committee's. In this case, it was certainly not unreasonable to want to obtain information from the person responsible for compensation at the national level, so as to understand fully the relations that might exist between regional compensation officers and senior management. In any case, the initial classification committee had already consulted the applicant's immediate supervisor. In its report, the Grievance Committee quotes a passage from this initial committee's report where it is said: [TRANSLATION] "the committee reviewed the JD (job description) of the immediate supervisor and obtained confirmation that the Manager, Human Resources Operations, is responsible for transmitting knowledge and providing advice regarding human resources to sector management, in particular with regard to strategic and operational issues" (Applicant's file, pp. 88-89).

[38] I do not see anything in the wording of the *Procedure* which could limit the number of management representatives who can be consulted by the Committee. Item VII (C) provides as follows :

[TRANSLATION]

> 1. A management representative who is familiar with the nature of the work of the grieved position should be available in order to answer committee members' questions.
>
> 2. The management representative does not express any opinion on the classification decision which led to the grievance, does not attempt to influence the members of the committee, does not participate in the committee's deliberations and is not present when observations are made by the complainant and/or his or her representative.

[39] It seems to me that this provision is to be taken in its generic sense and simply aims to provide that management must be available to answer the Committee's questions. In fact, it seems to me that the applicant is in a very poor position to find fault with the Committee for having invited two management representatives to answer its questions, when she herself had asked the Committee to meet with her immediate supervisor and the Agency's executive director for Quebec. In any case, the applicant did not elaborate on her reasons for believing that she was prejudiced by the fact that two persons were present rather than only one.

[40] As for the argument that the testimony of these management representatives was given preference over the job description, without the applicant being given the opportunity to be heard, I would make the following comments. It is totally exact to claim, as does the applicant's representative, that a classification grievance cannot pertain to the content of a job description or the effective date of the classification decision. Those aspects are resolved by applying the resolution procedure for staff relations grievances provided for in collective agreements (*Classification Grievance Procedure*, Item I(B)(2)). It is also strictly true that the job description for the applicant's

position includes supplying strategic advice. Indeed, the last paragraph of page 3 of the job description reads:

> [TRANSLATION]
>
> Give strategic advice to senior management of the operations centre and to human resources management concerning the compensation program and supply information on the implication of new or amended acts or regulations to management in Ottawa. Draw up recommendations for the implementation of communication strategies. This information allows them to foresee repercussions of changes on regional resources and to propose solutions.

[41] Contrary to what the applicant asserts, however, the Committee did not refuse to accept the duties contained in the job description and did not modify the content of her tasks by basing itself solely on what the management representatives said. Those representatives acknowledge, as indeed does the Committee, that the applicant sometimes provides stategic advice to senior management. It is on the frequency and intensity of this task that there is disagreement. Relying on the job description of the applicant's immediate supervisor, as well as on the information provided by the management representatives, the Committee concluded that the occasional nature of this task did not justify raising the mark for the "impact" element. This is a conclusion that the Committee could draw without modifying or misrepresenting the job description of the position in question. Moreover, that is only one of the factors that the Committee took into account in its assessment of the "impact" element, as the original English version of its report attests.

[42] I am conscious of the fact that the obligation to act fairly applies to the classification grievance resolution process. While this obligation lies on the "lesser requirement side" considering the nature of this procedure, the person affected must at the very least have the right to put forth his

or her point of view on any issue that might have an impact on the decision. As Evans J. wrote for the Federal Court of Appeal in *Bulat* v. *Canada (Treasury Board)*, [2000] F.C.J. No. 148 :

> 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.

[43] In this case, the applicant had every opportunity to make her representations. Not only was the Committee aware that the applicant's immediate supervisor had confirmed to the initial interdepartmental committee that she provided advice to senior management on strategic and operational issues, but her representative returned to this same point during the October 26, 2006 hearing. The applicant cannot therefore complain that she was caught by surprise or that she was not able to give her version of the facts. Her position was known by the Committee, and it simply chose not to accept it. This could not constitute a breach of the principles of procedural fairness.

(C) Did the Committee breach the principles of procedural fairness by consulting the PCIS without advising the applicant?

[44] The applicant argued that the Committee contravened the *Procedure* by using, without advising her thereof, information from the Position and Classification Information System. To support her claim, the applicant referred to Item VII (D)(2), which reads as follows:

> [TRANSLATION]
>
> Management or the complainant may present new information to the committee at any time between the day of the hearing and the issuance of the decision. If the committee deems that new information is

> important, this information shall be conveyed to the other party, which will then have ten days to submit a reply. The committee shall review both the information and the other party's reply before finalizing its report.

[45] It does not seem to me that this argument should be accepted for the following reasons. Even though the evidence is contradictory in this respect, it seems that the PCIS is a reference tool available within the public service. But even supposing that the applicant did not have access to it, the explanation provided by Ms. Duford for not having submitted it to her seems to me to be reasonable. In her cross-examination on affidavit, she mentioned that the PCIS report is a simple reference tool that gives a list of all positions at a given level. It was not, in this case, new information presented by management; moreover, this report only confirmed that in terms of relative value, several regional compensation manager positions are classified AS-04. Consequently, even if Item VII (D)(2) of the *Policy* was applicable, the Committee could consider that the information was not sufficiently important for it to be necessary to inform the applicant thereof.

[46] For all these reasons, I consider that the application for judicial review must be dismissed. Both parties waived costs at the hearing, therefore there will be no costs.

JUDGMENT

THE COURT ORDERS that the application for judicial review be dismissed without costs.

"Yves de Montigny"
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

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