

**Date: 20090306**

**Docket: T-240-08**

**Citation: 2009 FC 242**

**Ottawa, Ontario, March 6, 2009**

**PRESENT: The Honourable Mr. Justice Campbell**

**BETWEEN:**

**LESLIE GRAUER, DIANA HARTEL,  
MARILYN MONTGOMERY, and VINH NGUYEN**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application challenges the January 14, 2008 decision of a Deputy Head who, by approving the recommendation of a Classification Grievance Committee (the Committee), found that the duties and responsibilities of the grieved position of Senior Psychologist – Regions is properly classified at the PS-03 level. The Applicants' argument is that the classification should have been raised to the PS-04 level and Deputy Head's failure to do so is based on substantive and procedural error.

[2] For the following reasons I reject the Applicants' arguments.

[3] It is agreed that for the purposes of the present review the decision and conduct of the Committee merge into the Deputy Head's decision (the Decision).

[4] It is further agreed that the standard of review of the Decision is reasonableness and that, because the Committee is in effect an expert tribunal, the Decision is to be accorded high deference and issues of procedural fairness are to be judged on the standard of correctness.

**I. Substantive Arguments:**

***A. Filing of an affidavit by the Chairperson of the Committee***

[5] The Chairperson's affidavit contains a mix of uncontested factual statements and contested opinion with respect to the conduct of the grievance. I find that only the factual statements are relevant and, therefore, admit the affidavit only to prove the facts found in the following paragraphs: paragraphs 1-4; and with respect to paragraph 10 the first three paragraphs under the heading "Degree of contact with National Headquarters", the first paragraph under "Provision of all business lines in the regions", and the first paragraph under "National scope and impact of responsibilities".

***B. Email from management representative***

[6] On January 21, 2007, the management representative sent several members of the Committee and the Applicants, *inter alia*, an email expressing concerns that the information he provided to the Committee was misrepresented and/or misunderstood and provided clarifications. I

find that the Committee did not misrepresent the material provided by the management representative but, contrary to the Applicants' position, used it to come to a different conclusion.

[7] I agree that the Committee did make a mistake in finding that the Director General is a functional expert as pointed out by the management representative. However, I find nothing turns on this error.

### ***C. Description of Key Activities***

[8] In the present case, prior to the grievance at issue, an agreement was reached between the Applicants and management as to the Key Activities of the Applicants' job description. The relevant Key Activity of the description is as follows: "plans, designs, develops and delivers new and original products and services to address the unique needs of clients" (see Applicants' Application Record, p. 113). The Applicants argue that the creative elements of this feature of the job description entitle them to the higher classification of PS-04. In my opinion, this argument fails because this activity only relates directly to client services which are the focus of the PS-02 classification (see Applicants' Application Record, p. 149).

## **II. Procedural Fairness Arguments**

### ***A. Composition of the Committee***

[9] The Applicants argue that the Committee's composition did not meet the requirements set out in the procedures, and, therefore, constitutes a breach of procedural fairness. Specifically, the Applicants cite the *Classification Grievance Procedure: Canada Public Service Agency*, approved

as TB Minute 821755, dated June 23, 1994, under V. Classification Grievance Committee (the Procedure) to support the argument that to not include a person who is knowledgeable in the type of work being grieved is an error.

[10] I dismiss this argument because the Procedure is permissive: it only states that the member be “from within or outside the department, preferably a line manager with experience in applying the standard(s) being used and knowledgeable of the type of work being grieved” [my emphasis].

***B. The Committee’s deliberations***

[11] The Applicants argue that because the Committee apparently gave thought to the grievors’ submissions before hearing from the management representative a breach of procedure occurred. I find that no unfairness arose from this fact because the Committee provided its recommendations only after considering all the evidence and submissions.

***C. Contradictory information***

[12] The Applicants argue that they were not provided with an opportunity to reply to evidence provided by the management representative that they believed to be contrary to what the representative had said in a previous grievance. In the classification grievance process, neither the griever nor employer has a vested right to respond to the other’s submissions. However, applicants do have a right to have their main argument considered by the Committee and to be advised of crucial information about which they could not reasonably have had knowledge (see *Bulat v. Canada (Treasury Board)* (2000), 95 A.C.W.S. (3d) 99 at para. 10; *Groulx v. Canada (Veterans*

*Affairs*), 2007 FC 293 at para. 19; *Utovac v. Canada (Treasury Board)*, 2006 FC 643 at para. 19). I dismiss the Applicants' argument because I find that the previous statements in issue are not substantially different in kind from the statements made in the present grievance but are only more detailed (see Applicants' Application Record, pp 93 and 44). As a result, I find that Applicants cannot be said to have been taken by surprise.

### **III. Conclusion**

[13] I find no reviewable error in the Decision.

**ORDER**

For the reasons provided, the Application is dismissed.

I make no order as to costs.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** T-240-08

**STYLE OF CAUSE:** LESLIE GRAUER, DIANA HARTEL, MARILYN MONTGOMERY, AND VINH NGUYEN v. ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** March 5, 2009

**REASONS FOR ORDER AND ORDER:** CAMPBELL J.

**DATED:** March 6, 2009

**APPEARANCES:**

Steven Welchner FOR THE APPLICANTS

Karl Chemsî FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Welchner Law Office FOR THE APPLICANTS  
Ottawa, Ontario

John H. Sims, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Ottawa, Ontario