

Date: 20080704

Docket: T-1580-07

Citation: 2008 FC 829

Ottawa, Ontario, July 4, 2008

PRESENT: The Honourable Mr. Justice Louis S. Tannenbaum

BETWEEN:

**VALÉRIE COUPAL, BRANISLAV ATIJAS, YVES BÉLANGER,
CHANTAL BELLEAU, RÉAL BILODEAU, MICHEL BLANCHETTE,
MADJID BOUSSOUIRA, MARCEL BOUVIER, STEFANO CAGNA,
LYNE CHARTRÉ, DANIEL COLAS, PATRICE COSSETTE,
MICHEL COUILLARD, PATRICIO DIAZ, BACHIR DJILLALI,
YVONNE DOLBEC, JEANNE DUFOUR, PAQUERETTE DUFOUR,
CLAUDE FAVREAU, LORRAINE FISET, LOUIS FORTIN, LUCIE GAGNON,
JOCELYNE GAUTHIER, MICHÈLE GAUVIN, ÉRIC GIRARD, BRUNO GODIN,
MARCEL GOURDE, JACQUES GUY, EL MAHDI HADDOU,
KATHY HARRISON, JEAN-MARC JACOB, RÉMI JACQUES,
ÉLISABETH JOBIDON, MARC LAPIERRE, SONJIA LAURENDEAU,
MICHEL LÉONARD, MAKHLOUF LOUNIS, ANNA MACKAY
MICHEL MARCOUX, PIERRE MARCOUX, RACHEL MARTEL,
PETER O'DONNELL, GILLES PATENAUE, ÉVELYNE PERRAS,
KARINE PERREAULT, ROBERT PHILIPPON, SONIA POISSON,
BERNARD RAYMOND, MARTIN RODIGUE, PAUL SIEMASZKIEWICZ,
HÉLÈNE SOUCY, ÉLISABETH ST-PIERRE, ANDRÉ TREMPE,
CLAUDE TRÉPANIÉ, GÉRALD TURGEON and SIMON VILLENEUVE**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] I have before me an application for judicial review of a decision by grievance adjudicator Léo-Paul Guindon, Member of the Public Service Staff Relations Board, dated July 31, 2007. The decision was in relation to a grievance referred to arbitration pursuant to section 92 of the *Public*

Service Labour Relations Act, R.S.C. 1985, c. P-35. In his decision, the adjudicator dismissed the grievance regarding the employer's refusal to repay the fees that the applicants had paid to the Ordre des médecins vétérinaires du Québec for 2001-2002 and 2002-2003.

[2] The applicants (the civil servants) allege that the adjudicator made an erroneous decision by dismissing the grievance.

[3] The parties filed in evidence a joint statement of facts reading as follows:

[TRANSLATION]

...

1. The grievors in this grievance (the complainants) are employed by the Canadian Food Inspection Agency (the CFIA);
2. At the time that this grievance was filed, the complainants occupied VM-01, VM-02 (Veterinary Medicine) and RVO (Regional Veterinary Officer) positions, respectively, at the CFIA;
3. Subject to paragraphs 7, 8 and 9 below, during the period covered by the grievance all of the complainants occupied VM-01 and VM-02 positions and were assigned to the meat hygiene program;
4. The complainants, designated as veterinary inspectors under section 13 of the Canadian Food Inspection Agency Act, were called on to work in abattoirs located in the province of Quebec;
5. The complainants request reimbursement of the annual professional membership fees paid to the Ordre des médecins vétérinaires du Québec ("the OMVQ") for the years 2001-2002 and 2002-2003;
6. In accordance with the provisions governing the OMVQ, a fiscal year is deemed to begin on April 1 of each year and to end on March 31 of the following year;
7. The following complainants began their employment at the CFIA in veterinary medicine positions on the following dates:
 - (a) Atijas, Branislav - July 2, 2002;
 - (b) Bélanger, Yves - May 27, 2002;
 - (c) Haddou, El Mehdi - April 22, 2002
 - (d) Harrison, Kathy - July 2, 2002;
 - (e) Lapierre, Marc - June 17, 2002;

- (f) Lounis, Makhlouf - June 3, 2002;
 - (g) Siemaszkiewicz, Paul - May 27, 2002;
 - (h) St-Pierre, Elizabeth - May 27, 2002;
 - (i) Villeneuve, Simon - May 27, 2002.
8. The following complainants were transferred to the Animal Health Program on the following dates:
 - (a) Couillard, Michel - March 23, 2003;
 - (b) Djillali, Bachir - March 24, 2003;
 - (c) Gagnon, Lucie - March 24, 2003.
 9. The following complainants were promoted to RVO positions on the following dates:
 - (e) Mackay, Anna - February 17, 2003;
 - (f) Marcoux, Pierre - February 14, 2003.
 10. The complainants who were transferred to the animal health program as indicated in paragraph 8 were reimbursed for all or part of the membership fees that they paid to the OMVQ;
 11. All of the complainants were appointed to their respective positions under federal legislation.
 12. All of the complainants are employees of the Government of Canada.

[4] The civil servants' application was based on article E2.01 of the relevant collective agreement dated May 27, 2002, between the Canadian Food Inspection Agency (hereinafter the CFIA) and the Professional Institute of the Public Service of Canada with respect to the veterinary medicine bargaining unit. Article E2.01 reads as follows:

ARTICLE E2 – REGISTRATION FEES

E2.01 The Employer shall reimburse an employee for his payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his position.

[5] The adjudicator properly summarized the evidence. It would therefore be appropriate to refer to a few paragraphs of his decision:

...

[6] The parties acknowledge that clause E2.01 appeared in the former collective agreement with the same wording as quoted above. Clause E2.02, quoted above, is new and did not appear in the former collective agreement. The parties acknowledge that the word “year” used in clause E2.02 refers to the year beginning on April 1 of a calendar year and ending on March 31 of the following calendar year and that it corresponds to the 12 months of the federal government fiscal year.

[7] The grievors were veterinary inspectors in the meat hygiene program. During her testimony, Dr. Coupal adduced the VM-01 and VM-02 position descriptions (Exhibit F-3). Veterinarians at both of those levels make diagnoses following post-mortem and ante-mortem assessments on animals. Veterinarians must determine whether animals represent a risk to human or herd health and whether hygiene and slaughter standards are respected. When animals or animal parts are affected by certain hygiene conditions that make them unfit for human consumption, veterinarians on duty sign condemnation certificates (Exhibit F-4). According to Dr. Coupal, non-members of veterinarians’ professional associations are not prohibited from performing any of the duties set out in the position descriptions.

[8] When shipments to the United States market must meet the requirements of United States legislation, veterinarians on duty sign export certificates (Exhibit F-5). According to Dr. Coupal, in the past such shipments have been refused at the border because the veterinarian did not indicate his or her professional title with the signature. Export certificates require that the veterinarian’s name and professional title (veterinary inspectors within the meaning of the *Meat Inspection Act*, R.S.C. 1985, c. 25 (1st Supp.)) be indicated and that a seal be affixed.

...

[11] According to Dr. Coupal, a veterinarian must be a member in good standing of a veterinarians’ professional association to be able to use the title “Dr.” Obtaining a university degree in veterinary medicine does not allow a person to practise as a veterinarian or to use the title “Dr.” unless that person is also a member of a professional association. Only members in good standing of such a professional association may make diagnoses and identify forms of pathology.

...

[14] No mention was made of a requirement for membership in a veterinarians' professional association when Dr. Coupal was hired or at the selection interviews. When she was hired, Dr. Coupal did not verify whether membership in a veterinarians' professional association was a requirement for being hired as a veterinarian or whether ongoing membership was a requirement for remaining in the position. She noted that some veterinary inspectors are not members in good standing of such an association. Membership in a professional association has no repercussions on veterinary inspectors' pay. For veterinary inspectors, reimbursement of professional membership fees is a form of taxable income.

...

[16] According to Dr. Coupal, all export certificates accompanying shipments to the United States indicate the professional title of the person who signs them. In the abattoir where she works, one export certificate that a veterinary inspector signed was returned because that inspector did not indicate his or her professional title with the signature, so a new export certificate had to be prepared. Dr. Coupal always uses the abbreviation "Dr." or "DVM" with her signature, although she has not received any directive, comment, remark or memorandum from the employer in that regard. Refused export certificates are returned to the abattoir concerned, and the person responsible at the regional office is notified of the incident. Products or certificates not meeting standards can result in export certificates being refused.

[17] Gaétan Tessier, CFIA Regional Director, Montréal West, testified that the admissibility requirements for a Canadian veterinarians' professional association do not require being a member of such an association. The CFIA requires that candidates for veterinary inspector positions hold a diploma from a school of veterinary medicine accredited or approved by the Canadian Veterinary Medical Association ("the CVMA") or a degree from another school of veterinary medicine and a Certificate of Qualification issued by the CVMA's National Examining Board. A Certificate of Qualification is issued to persons who pass a test administered by the CVMA's National Examining Board. These requirements are identical for the two levels of the veterinary inspector positions.

...

[19] Mr. Tessier confirmed that a veterinary inspector who is not a member of a professional association may perform all of the duties set out in the position descriptions. Membership in such an association has no repercussions on pay or promotion. In Mr. Tessier's opinion, between 20 and 25 percent of veterinary inspectors at the CFIA are not members of such an association.

[20] Veterinarians are not required to indicate their professional title when signing condemnation certificates. The CFIA does not require veterinary inspectors to be members of a professional association. The signature appearing on export certificates accompanying shipments to the United States or to any other country certifies, on behalf of the CFIA, that a veterinary inspector within the meaning of the Meat Inspection Act has carried out an inspection of the products and declares that they meet the various legal requirements. According to Mr. Tessier, no exports to the United States have been refused because a veterinary inspector did not indicate his or her professional title with his or her signature. He was not informed of any particular problems with respect to export certificates that did not indicate a veterinary inspector's professional title. Most veterinary inspectors who are members of a professional association indicate their title with their signature.

[21] Veterinary inspectors working in the meat hygiene program are not called on to euthanize animals. If animals or poultry are to be euthanized, the abattoir does it. Drugs are not used to euthanize animals in the meat hygiene program.

[6] The arguments are also summarized by the adjudicator:

The civil servants

[23] It is true that, as long as federal government employees' actions fall within areas of exclusive federal jurisdiction, they are not subject to provincial legislation and regulations. *Canada v. Lefebvre*, [1980] 2 F.C. 199 (C.A.), sets out the principle that the federal public service is not subject to provincial legislation.

...

[25] The activities of the CFIA meat hygiene program extend beyond areas of exclusive federal jurisdiction, since they involve provincial abattoirs and producers as well as other countries. If the public is led to believe that the CFIA does business with certified professionals, it becomes a matter of public interest that the persons providing CFIA services be certified professionals.

...

[30] According to Dr. Coupal's testimony, the evidence establishes that export certificates accompanying shipments to the United States are not accepted if no professional title is indicated. As well, the employer's witness acknowledges that veterinary inspectors use the abbreviation of their professional title; even though the employer does not require them to do so, using the title enhances the CFIA's credibility.

The employer

[31] This grievance is based on clause E2.01 of the collective agreement, which provides for the reimbursement of membership fees only if payment of such fees is a requirement for the continuation of the performance of the duties of the veterinary inspector. The burden of proof rests on the grievors (*Muller and Williams v. Canada Customs and Revenue Agency*, 2002 PSSRB 19, and *Rosendaal et al. v. Treasury Board (Revenue Canada - Taxation)*, PSSRB File Nos. 166-02-22291, 23143 and 23144 (19930506)).

...

[33] According to the evidence adduced, the employer does not require veterinary inspectors to be OMVQ members to become employed or to remain in their positions. In a similar case, *Dagenais v. Treasury Board (Veterans Affairs Canada)*, PSSRB File No. 166-02-16517 (19870602), an adjudicator found that in those circumstances membership in a professional association was not a requirement for the continued performance of the duties of the position. *Kalancho v. Treasury Board (Solicitor General Canada)*, PSSRB File No. 166-02-14738 (19841220), in which an employer

does not require its employees to be members of a professional association, came to the same conclusion.

[34] The grievors allege that certain duties (making diagnoses and using drugs to euthanize animals) require them to be OMVQ members. Those requirements, which are set out in a provincial statute, are not applicable to federal government employees. According to *Harper v. Canadian Food Inspection Agency*, 2002 PSSRB 87, the evidence must establish that the employee must be authorized to exercise his or her profession to perform the duties of his or her position and that such a requirement is imposed by a federal statute. That is not the case in this grievance since veterinary inspectors may perform all of the duties set out in their position descriptions without being members of a veterinarians' professional association.

[35] The requirement to be admissible to a Canadian veterinarians' professional association, set out in the statement of qualifications, does not imply a requirement for membership in such an association. The employer has never required that incumbents in those positions be members of a veterinarians' professional association to become employed or to remain in a veterinary inspector position. Membership in such an association has no advantages with respect to pay or promotion.

[7] The grievance was dismissed by the adjudicator, I refer to the following grounds of his decision:

[39] Clause E2.02 of the collective agreement has to do with the reimbursement of registration fees paid to a regulatory body governing the practice of veterinary medicine, where such reimbursement is not a requirement for the continuation of the performance of the duties of the position. According to clause E2.02(b), that reimbursement is to start for registration fees required for 2003.

[40] The grievors' grievance concerns the reimbursement of professional membership fees paid for the years 2001-2002 and 2002-2003. According to the evidence adduced, the 2003 membership fee year referred to in the collective agreement

corresponds to the federal government fiscal year, which is from April 1, 2003 to March 31, 2004. As a result, clause E2.02 of the collective agreement is not applicable to this grievance, since the employer agreed to reimburse non-compulsory professional membership fees only starting in 2003 and not for 2001 or 2002.

[41] As well, in accordance with clause E2.01 of the collective agreement, professional membership fees may be reimbursed to an employee only when the payment of such fees is a requirement for the continuation of the performance of the duties of the position . . .

. . .

[43] Dr. Coupal cited different reasons than Dr. Katchin to establish that paying OMVQ membership fees is a requirement for the continuation of the performance of the duties of her position as a veterinary inspector assigned to the meat hygiene program. On this point, she acknowledged that no duty set out in the descriptions for VM-01 and VM-02 positions requires membership in a veterinarians' professional association. Therefore, according to the position descriptions, OMVQ membership is not a requirement for the continuation of the performance of the duties of veterinarians at the CFIA and, in these circumstances, clause E2.01 of the collective agreement is not applicable.

[44] According to Dr. Coupal, the evidence that an export certificate accompanying a shipment to the United States was refused because the signing veterinary inspector apparently did not indicate his or her professional title with the signature establishes that the professional title is a requirement for the continuation of the performance of the duties of her position. That statement is contested by Mr. Tessier, who was unaware of that particular incident. Mr. Tessier stated that no such incident was brought to his attention in his capacity as CFIA regional director, Montréal West. According to Dr. Coupal, the regional director, Montréal West, need not be informed of such an incident, which is purely administrative in nature and is dealt with by the abattoir concerned. In this grievance there is no need to choose between the interpretations offered by Dr. Coupal and Mr. Tessier since, assuming that the incident referred to by Dr. Coupal did in fact occur, it does not give rise to entitlement to the reimbursement of professional membership fees.

[45] The parties acknowledge that the employer did not require or recommend that veterinary inspectors indicate their professional title

on export certificates or condemnation certificates. I do not see how the employer's tolerance of the fact that some employees indicate their professional title on those documents could be considered an indication that OMVQ membership is "a requirement for the continuation of the performance of the duties of [their] position[s]."

[46] Even though, as a result of their own legislation or their own criteria for the protection of human or animal health, the administrative authorities of importing countries or agencies such as the OIE require that veterinary inspectors be members in good standing of a veterinarians' professional association, this fact cannot influence the interpretation of the collective agreement. Despite the great importance that must be attached to matters of public interest and of the protection of human and animal health, I do not see how these matters can be relevant to the interpretation and application of the collective agreement in this grievance. The rules of interpreting collective agreements allow for reference to extrinsic evidence as an aid to interpretation only where the wording of a clause is confusing (see Brown and Beatty, *Canadian Labour Arbitration*, 4th Ed., para 3:4400). In this grievance, that is not the case.

[8] The parties agree that the appropriate standard of review in this case is that of unreasonableness.

[9] I am satisfied that the adjudicator did not err and that according to the evidence and the case law, his decision is very reasonable. The decision therefore does not require the intervention of this Court.

ORDER

THE COURT ORDERS that:

For the foregoing reasons, the applicants' application is dismissed with costs.

“Louis S. Tannenbaum”

Deputy Judge

Certified true translation

Kelley Harvey, BCL, LLB

FEDERAL COURT
SOLICITORS OF RECORD

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