

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Fanshawe College
("the College")

and

Ontario Public Service Employees Union,
Local 109
("the Union")

Grievance of Margaret Rae

ARBITRATOR:

Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:

Sheila Wilson, Manager, Labour Relations
Mike Logan
Cathy Macdonald

FOR THE UNION:

Harold Sobel, Spokesperson
Margaret Rae
Andre Savoie

Hearing held in London, Ontario on October 16, 2009. Post-hearing submissions received on October 17 and 20, 2009.

AWARD

I have before me the March 6, 2007 grievance of Ms. Margaret Rae. The grievor holds the position of Computer Lab Technologist at Fanshawe College. The College rated her position at Payband H. The grievance alleges that the position has been improperly classified, and seeks reclassification at Payband J.

There were no objections with respect to my jurisdiction or to the arbitrability of the grievance.

The parties advised that they were in agreement that any compensation owing to the grievor as the result of this award will be payable retroactively to March 1, 2007.

The parties also agreed that the PDF dated March 1, 2007 is properly considered in these proceedings.

The Position Summary in the PDF describes the “overall purpose” of the grievor’s position as follows:

Under general supervision of the Manager provides high-quality customer services by facilitating and supporting a productive learning environment. Responsible for installing, customizing, maintaining and debugging hardware, software and networks; completing or initiating corrective action for hardware and software issues; providing guidance, advice and assistance to technicians, faculty and students in support of teaching/learning activities; monitoring and maintaining appropriate lab decorum and security; assisting the manager in related planning and budgeting activities.

The Duties and Responsibilities of the position are set out in the PDF as follows:

Oversees the daily operations of assigned computer labs and associated equipment and facilities through such activities as: 60%

- Establishing and maintaining an environment and decorum that supports effective and efficient teaching/learning activity.
- Providing lead technical support and guiding the technical support activity of lab technicians and others for the assigned facilities.
- Monitoring the status of all lab equipment and services and initiating or assigning appropriate and timely corrective action when issues arise.

- Installing, configuring, maintaining and debugging computer hardware, software and local networks.
- Establishing and implementing daily routine activities and task priorities for self and other technical support staff.
- Identifying potential problems and implementing appropriate preventative measures.

Assists lab clients to resolve problems they encounter in their use of lab hardware, software, network and procedures. Either corrects the problem or initiates appropriate corrective action. 15%

Liaises with faculty, students and others associated with the assigned labs with the objective of understanding and responding appropriately to their teaching/learning requirements and schedules. 10%

Assists the manager with planning/budgeting activities relating to lab resources, procedures and activities. 5%

Performs other related duties as assigned. 10%

The Union disputes the content of the PDF. Also in dispute are the ratings of the following factors: Analysis and Problem Solving, Independence of Action, Communication, Audio/Visual Effort, and Working Environment.

The parties each filed pre-hearing briefs in accordance with the collective agreement. Ms. Rae and Mr. Mike Logan, Manager, Technical Support Services, gave evidence as well.

At the commencement of the hearing, the parties provided me with some background to the current dispute. The Technical Support Services Department at the College is comprised of what I will refer to as three divisions: Academic Computing Support, Connect Resource Centre and Employee Computing Support. Mr. Logan has managerial responsibility for all three areas. The grievor works in the Academic Computing Support division. According to an organizational chart filed as part of the College's pre-hearing brief, there are a number of Technologists employed in both Academic Computing Support and Employee Computing Support. In the past, they were evaluated at Payband G. The grievance of one of the Technologists in Employee Computing Support was recently resolved at arbitration, with the result that the position

in question in those proceedings was reevaluated at Payband H. The College advised at the hearing before me that it considered it appropriate to reclassify all Technologists in Employee Computing Support and Academic Computing Support to Payband H, and a revised Arbitration Data Sheet was provided to the Union shortly before the hearing of this grievance. The College's representative advised that such reclassification was undertaken so that the positions in issue are "aligned" with the above referenced arbitration award. Such award is not before me in these proceedings.

In the case before me, I am of course called upon to address the disputed ratings assigned to the grievor's position. I have before me no evidence of the duties and responsibilities of the Technologist position in Employee Computing. I was advised that Technologists in Academic Computing report directly to Mr. Logan, while those in Employee Computing report to a Coordinator who in turn reports to Mr. Logan. There is no evidence before me, however, which permits me to draw any conclusions as to the significance of this distinction for purposes of rating the factors disputed here.

Accordingly, while I acknowledge the background to this grievance as described by the parties, I note at the outset that my role is to address and determine the appropriate factor ratings based on the evidence before me.

PDF LANGUAGE

As indicated above, the Union disputes the content of the PDF, and asks me to accept that the changes and/or additions which it proposes accurately reflect the duties and responsibilities of the grievor's position.

The changes proposed by the Union relate to the following areas of the PDF: Duties and Responsibilities, Independence of Action, Physical Effort and Working Environment.

I will consider the PDF language relating to Independence of Action and Working Environment when addressing the disputed ratings of these two factors.

The Duties and Responsibilities section of the PDF states in part that the grievor's position is responsible for "installing, configuring and maintaining and debugging computer hardware, software and local networks." The Union suggests that this responsibility is more accurately captured by the addition of the word "customizing" so that it reads "installing, configuring, customizing, maintaining and debugging computer hardware, software and local networks." The evidence before me clearly establishes that

the grievor customizes computer hardware, software and networks and I note that this is already reflected in the Position Summary.

The Union also took exception to some of the percentages assigned to duties set out in the Duties and Responsibilities section. The evidence before me does not permit me to draw any conclusions as to the accuracy of the challenged percentage figures. I did not understand such disagreement to have any bearing on the rating issues before me for determination however.

While the rating of the Physical Effort factor is not in dispute before me, the Union suggested that the language included in the PDF is inaccurate. The PDF states that the incumbent is required to crawl under desks on a daily basis. The Working Environment section of the PDF states that the grievor is required to do so on a weekly basis. The grievor accepted that this function is fairly characterized as weekly.

ANALYSIS AND PROBLEM SOLVING

The College rated this factor at Level 3, Regular and Recurring. The Union takes the position that it should be rated at Level 4.

The Manual defines Level 3 Analysis and Problem Solving as follows:

Situations and problems are identifiable, but may require further inquiry in order to define them precisely. Solutions require the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position.

Level 4 Analysis and Problem Solving is defined as follows in the Manual:

Situations and problems are not readily identifiable and often require further investigation and research. Solutions require the interpretation and analysis of a range of information according to established techniques and/or principles.

“Established techniques and/or principles” is a defined term, meaning “recognized guidelines and/or methods to accomplish a desired outcome. Can be defined as an individualized way of using tools and following rules in doing something; in professions, the term is used to mean a systematic procedure to accomplish a task.”

The Notes to Raters are of assistance and state as follows:

At level 3, the types of problems that are encountered are readily identifiable but the position must be able to identify when additional information is needed to clearly understand the problem or situation. In order to develop an appropriate solution, the position will need to gather more information. In many circumstances, this additional information or clarification will be readily available, but there will be times when the position will need to seek the additional information from a source it is unfamiliar with.

The Union took the position that the situations and problems encountered by the grievor are “not readily identifiable” and require “further investigation and research.”

The evidence established that the problems with which the grievor deals in the course of performing her duties are diverse and that a number of factors contribute to the challenges in understanding and solving them.

The grievor explained that clients who report a problem are often not present in the computer lab when she is able to enter the lab to investigate complaints. She described that she must in some instances try to replicate the problem that was reported so that she can attempt to deal with it.

Ms. Rae gave very detailed and largely undisputed evidence with respect to her role in setting up labs, or in modifying them as required. She explained that there are a number of variables that she needs to address and consider. She described the challenges associated with establishing appropriate security settings for the lab environment. She also discussed the “ghosting process” whereby software is installed on a master computer and then deployed to the lab computers. I heard evidence regarding the challenges of modifying a lab on a tight timeframe when a class is added or new software is required, while ensuring that the installation of such software does not impact on the use of the lab for classes already in progress. Similarly, Ms. Rae offered a helpful description of the use of VMware software that allows an operating system and applications to operate within another operating system.

The evidence established as well that the College utilizes customized software at times, and that there is little documentation available therefore to assist in dealing with problems. Ms. Rae testified that the College seeks to be at the leading edge in offering programs on new technology. By way of example, I heard evidence that the VISTA operating system was taught before it was released to the public. Ms. Rae explained that

there was therefore little documentation available to her at the time in addressing compatibility issues that arose.

There is no doubt that the grievor deals with diverse situations and problems and that she is required to consider and address a number of variables in doing so. I accept that this may be challenging. It seems to me, however, that the PDF and the examples addressed at the hearing reflect situations and problems that are “identifiable,” possibly requiring “further inquiry in order to define them precisely.” I am satisfied as well that the solutions to such problems “require the analysis and collection of information” within the meaning of the Level 3 factor definition and the applicable Notes to Raters.

The rating of this factor at Level 3, Regular and Recurring, is confirmed.

INDEPENDENCE OF ACTION

The College rated this factor at Level 3, Regular and Recurring and Level 4, Occasional. The Union seeks a rating of Level 4, Regular and Recurring.

The Manual defines Level 3 Independence of Action as follows:

Position duties are completed according to general processes. Decisions are made following general guidelines to determine how tasks should be completed.

Level 4 Independence of Action is defined in the following manner:

Position duties are completed according to specific goals or objectives. Decisions are made using industry practices and/or departmental policies.

A number of terms contained in the definitions are also defined in the Manual. Of particular significance for present purposes are the following definitions:

Guideline – a statement of policy or principle by which to determine a course of action

Industry Practice – technical or theoretical method and/or process generally agreed upon and used by practitioners to maintain standards and quality across a range of organizations and settings.

This factor measures the level of autonomy in a position, taking into consideration the types of decisions made, which aspects are decided by the incumbent and which

require consultation with a supervisor or someone else, and the rules, procedures, past practice and guidelines that are available to provide guidance and direction.

Ms. Rae and Mr. Logan both described in detail the level of independence of action associated with the grievor's position. Clearly, as Mr. Logan explained, there are "boundaries attached to the autonomy" of the grievor's position. He referred to system access controls, to physical access controls and to the fact that certain decisions are made on a College-wide basis. Ms. Rae accepted that she, like all College employees, is subject to general policies such as that pertaining to Acceptable Use of Computer Resources.

The Union maintained, however, that such policies of general application do not impact on the autonomy associated with the grievor's position. Mr. Logan candidly acknowledged that the grievor's position enjoys "significant latitude" within such boundaries.

The PDF states that sixty per cent of the grievor's time is spent overseeing the daily operations of assigned computer labs. Ms. Rae described in detail the numerous variables that must be addressed and the decisions that must be made in doing so.

She explained that when she receives a request to install particular software, that she is responsible for addressing how such request impacts on overall system requirements and the needs of all system users. She was clear that the party requesting service does not in this sense pre-determine the "specific results or objectives" to be accomplished.

In performing her duties, it is clear that there are no "guidelines" as defined in the Manual available to the grievor by which her decisions are made. While it is true that manuals and on-line technical support websites are of assistance on occasion, generally the grievor must rely upon her own knowledge of her field of work and certain departmental policies to guide her. Mr. Logan acknowledged that there are no written guidelines available to the grievor, and indeed commented that it would be entirely impractical to formulate detailed guidelines by which the grievor would make the decisions required in performing her regular duties. Rather, he described that she operates based on "an understanding that exists by virtue of being in the position."

The PDF states, and Ms. Rae and Mr. Logan confirmed, that "day to day activity is performed independently." "Unusual assignments" may be reviewed by Mr. Logan.

Mr. Logan acknowledged that the grievor has “considerable autonomy” in the performance of her duties and that he proceeds on the basis that “the job is being done” in the absence of customer complaints. This is reflected in the PDF insofar as it states that “the incumbent is expected to review own work . . . for accuracy, completeness and achievement of desired objective.”

The evidence also established that the grievor is authorized to make internal purchases through Retail Services up to \$2500 with the proviso that there will be “prior communication” with Mr. Logan for purchases that are not “expected and/or typical.” Clearly, however, Mr. Logan has a “good awareness” of purchasing activity, and sees all receipts.

In my view, this factor should be rated at Level 4, Regular and Recurring. I accept that “position duties are completed according to specific goals or objectives,” and that “decisions are made using industry practices” as defined.

The Union suggested that the PDF language relating to this factor does not accurately reflect the parameters of the independence associated with the position. To the extent that the Union takes issue with the indication in the College PDF that day to day activity is performed following “established guidelines,” and that guidelines are available to assist the incumbent, I agree with the Union that the evidence suggests otherwise. Similarly, to the extent that the Union suggests that “industry practice” is available to guide the incumbent, I agree that the evidence supports such contention.

I order that this factor be rated at Level 4, Regular and Recurring.

COMMUNICATION

The Arbitration Data Sheet filed by the parties indicates that the College rated Communication at Level 3, Regular and Recurring, and that the Union seeks a rating of Level 4, Regular and Recurring.

Level 3 Communication is defined in the Manual as follows:

Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.

The Manual defines Level 4 Communication in the following manner:

Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others.

After the hearing, the grievor forwarded an e-mail to the College's representative and me advising that there was an oversight on the Union's part in signing the Arbitration Data Sheet.

The Union stated that the College originally rated this factor at Level 3, Regular and Recurring and Level 4, Occasional. This is reflected in an earlier version of the Arbitration Data Sheet which the College filed as part of its pre-hearing brief. The Union took the position that if I am not convinced that Level 4 is justified on a Regular and Recurring basis, that I should award it on an Occasional basis.

Both parties' representatives confirmed that I should deal with the Union's position on the basis of the submissions before me at the hearing.

The Union canvassed a number of examples of Communication at the hearing, many of which in my respectful view, fell short of demonstrating Level 4 Communication on a Regular and Recurring basis.

It also argued, however, that the grievor explains and interprets information, within the meaning of those defined terms, to "gain the cooperation of others."

The Notes to Raters address "gaining cooperation," stating that this "refers to the skills needed to possibly having to move others to your point of view and gaining commitment to shared goals. The incumbent works within parameters determined by the department or College and usually there is a preferred outcome or goal. The audience may or may not have divergent views."

The Duties and Responsibilities section of the PDF provides that sixty per cent of the grievor's time is spent overseeing the daily operations of assigned computer labs through the performance of a number of activities. Included therein is the grievor's responsibility for "establishing and maintaining an environment and decorum that supports effective and efficient teaching/learning activity."

This responsibility is reflected as well in the Position Summary which describes the "overall purpose" of the grievor's position in part as "monitoring and maintaining appropriate lab decorum and security."

Further, the Communication section of the College's PDF includes as a daily example of "obtaining cooperation or consent" the maintenance of lab decorum.

The grievor described her role in establishing and maintaining an environment and decorum that supports effective and efficient teaching and learning activities. She addressed the need to deal with students in the labs and seek compliance with the Student Code of Conduct. She indicated that she "communicates" with students in such a way as to gain their cooperation.

The College argued that Level 3 is the best fit here when the grievor's Communication role is viewed in light of the primary focus of the position as set out in the Duties and Responsibilities section of the PDF.

Based on the PDF language, however, construed in light of the evidence and the factor definitions, I am of the view that this factor is appropriately rated at Level 4, Regular and Recurring, and I so order.

AUDIO/VISUAL EFFORT

The College rated this factor at Level 1, Focus Maintained. The Union seeks a rating of Level 2, Focus Maintained.

The Manual defines Level 1 Audio/Visual Effort as follows:

Regular & recurring short periods of concentration; or occasional long periods of concentration.

Level 2 is defined as follows:

Regular & recurring long periods of concentration; or occasional extended periods of concentration.

The Manual defines "short period" as "up to 30 minutes at one time." "Long period" is defined as "up to 2 hours at one time including scheduled breaks." "Extended period" means "more than 2 hours at one time including scheduled breaks."

The Notes to Raters instruct that raters are only to consider tasks or situations "where a higher than usual level of focus or concentration is required." "Concentration," according to the Notes, means "undivided attention to the task at hand."

While the Union did not challenge the content of the PDF as it relates to this factor, it suggested that a higher rating is warranted taking into account the grievor's day to day duties and responsibilities.

Ms. Rae addressed her interactions with clients. She described spending five days troubleshooting a problem with Keywording Professional software. She referred to her role in setting up labs and in making changes to labs as required. She specifically addressed in this regard the “ghosting process.”

The College emphasized that only tasks or situations “where a higher than usual level of focus or concentration is required” are relevant for purposes of the rating of this factor.

Based on the PDF language and the evidence adduced at the hearing, I am not satisfied that regular and recurring long periods of concentration or occasional extended periods of concentration are required. The rating of this factor at Level 1a is confirmed.

WORKING ENVIRONMENT

The College rated this factor at Level 1, Regular and Recurring and the Union seeks a rating of Level 2.

According to the Manual, a Level 1 Working Environment means “acceptable working conditions.”

The Manual defines a Level 2 Working Environment as follows:

Can be one or more of the elements listed.

Working conditions involve:

- difficult weather conditions
- smelly, dirty or noisy environment(s)
- exposure to very high/low temperatures
- verbal abuse
- working in isolated or crowded situations
- travel

Ms. Rae’s evidence was that labs may be noisy when students are working in them. She emphasized as well that labs are used by hundreds of students and become dirty and dusty. She described that she must, on a weekly basis, crawl under desks in computer labs in order to access equipment and connections. She noted as well that computers need to be cleaned before she repairs them, and that she is exposed to dead skin and to dust in doing so.

There was some confusion with respect to the content of the PDF as it relates to this factor. The PDF included “crawling under desks” as an example of “accessing crawl

spaces/confined spaces.” The parties both agreed at the hearing, however, that “accessing crawl spaces” likely reflects something different than crawling under desks.

The Union seeks to include as a weekly example of a “smelly, dirty or noisy” work environment the need to crawl under desks. It noted that this was considered in the rating of the Physical Effort factor, and argued that it must be taken into account here as well.

While the grievor accepted that her working conditions are in some respects properly characterized as “acceptable,” she suggested that they are not comparable to those of an office environment.

The College accepted that the need to crawl under desks was properly considered in rating the Physical Effort factor. As addressed above, the grievor acknowledged that this takes place weekly. I note that the PDF as it relates to Physical Effort states that it takes place for less than one hour at a time. The College argued that this is not properly captured in a Level 2, Working Environment rating.

I am not convinced in the circumstances before me that the grievor’s working environment should be rated at Level 2, and I confirm the Level 1 rating. Similarly, I am not convinced that the PDF language is inaccurate or incomplete as alleged by the Union.

CONCLUSION

For all of the above reasons, the grievance is allowed in part.

To the extent that the grievance asserts that the grievor’s position has been improperly rated for Analysis and Problem Solving, Audio/Visual Effort and Working Environment, it is denied.

To the extent that the grievance asserts that the grievor’s position has been improperly rated for Independence of Action and Communication, it is upheld, and I order the College to amend the ratings as set out herein.

The net outcome is that the total points for the position are 601. It therefore falls within Payband I.

I order that the grievor be compensated at Payband I retroactive to March 1, 2007.

I remain seized with this matter to assist the parties with any difficulties they have in implementing this award.

DATED at TORONTO this 6th day of November, 2009.

Mary Lou Tims, Arbitrator