

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Humber College (“the College”)

and

Ontario Public Service Employees Union
 (“the Union”)

Grievance of Ann Midgley

ARBITRATOR: Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:

D. Michaluk, Counsel

FOR THE UNION:

D. Cooper, Local Union
 President

Hearing held in Toronto, Ontario on September 23, 2008.

AWARD

The grievor, Ms. Ann Midgley, holds the position of Student Services Assistant in the Student Services Department at the College's Lakeshore campus. Her grievance dated November 5, 2007 states as follows: "This is a grievance against my original PDF under the new classification system. . . . I grieve the content and the pointing and non-receipt of that PDF by Administration." The College submitted in advance of the hearing a Position Description Form dated March 3, 2008 ("the PDF"), and the parties agreed that it is this PDF that is now in issue in these proceedings.

There were no objections with respect to my jurisdiction to hear and determine the grievance or to its arbitrability.

A preliminary issue arose between the parties with respect to the number of College representatives in attendance at the hearing. Ultimately, after discussion, the parties agreed that four representatives of each party would participate in these proceedings despite the language of article 18.4.3.6 of the collective agreement which provides that "up to three (3) Management representatives and three (3) Union representatives may attend the hearing."

The College was represented by Counsel at the hearing, and the Union expressed concerns about and objected to this. While article 18.4.3.6 of the collective agreement states that "it is generally not the intent of the parties to use an outside legal counsel at an expedited arbitration hearing . . . ," it further provides that "where they intend to use . . . counsel at the hearing, they shall notify the other party at least ten (10) days before the date of the hearing." The Union acknowledged that it was provided with the requisite notice of the College's intention to be represented by Counsel. While I thus accepted that the College was entitled to do so, the hearing was conducted "informally" without "legalistic processes normally used in conventional arbitration" as contemplated by the collective agreement.

Before turning to the merits of the grievance, I note that both parties referred during these proceedings to discussions preceding the development of the PDF and the filing of the grievance. While it is fair to say that the parties differ as to what transpired

between them prior to arbitration, it is not necessary for me to address their respective accounts in determining the grievance before me.

One final point must be addressed before turning to the merits of the case. During the hearing, the College suggested that the grievance before me pertains to the grievor's position only as it existed up to August 27, 2007, and that such position was significantly or fundamentally altered at such time. After discussions between the parties, they agreed that the grievance relates to the grievor's position as it existed up to August 27, 2007, and that such position was modified effective August 27, 2007. The parties further agreed, however, that the outcome of this arbitration may impact on the grievor's future entitlement when the position as it has existed since August 27, 2007 is evaluated, and that the outcome of these proceedings continues therefore to be of significance.

The Union challenged the rating of four factors: Analysis and Problem Solving, Guiding/Advising Others, Physical Effort and Working Environment. It also disputed the content of the PDF. The Union filed in advance of the hearing a draft PDF which it views as acceptable, and I note that such draft varies in a number of respects from the PDF at issue here. At the hearing, however, the Union limited its argument to the rating of four factors and to the content of the March 2008 PDF as it relates to such factors.

There was some dispute between the parties with respect to my jurisdiction should I ultimately accept the Union's position that the examples included in the PDF for the disputed factors are "diluted" and do not reflect the full range of job function. The Union suggested that it was open to me should I so conclude to not only modify the resulting factor rating, but also to amend the language of the PDF. The College argued otherwise. While I note that such issue was raised, it is unnecessary for me to decide it given my conclusions herein.

I turn to consider the areas in dispute between the parties. In doing so, I have considered the March 2008 PDF including the Position Summary and the Duties and Responsibilities set out therein, the examples presented and relied upon by both parties, the relevant provisions of the Support Staff Job Evaluation Manual ("the Manual"), the written briefs and documentation provided by the parties in advance of the hearing, and the parties' submissions at the hearing.

ANALYSIS AND PROBLEM SOLVING

The College rates this factor at Level 2, Regular and Recurring. The Union seeks a rating of Level 3, Regular and Recurring.

The Manual defines Level 3 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.” The Notes to Raters assist in clarifying the difference between a Level 2 and 3 rating.

One of the key distinctions between Level 2 and 3 Analysis and Problem Solving addressed by the parties relates to the identification of situations or problems. The Job Evaluation Manual states that Level 2 problems are “easily identifiable” and that “analysis” as defined is “straightforward.” Level 3 problems are “identifiable, but may require further inquiry in order to define them precisely.” Examples relied upon by the Union include the position’s involvement in recommending for hire and orienting Peer Tutors, receipt by the Student Services Assistant of urgent requests for tutors not on the resource list, the need to address questions of international students seeking employment on campus, and the responsibility to assist student tutors in locating appropriate space for tutoring. In my view, such examples reflect largely self-defined and “easily identifiable” problems, and not “identifiable problems” which “may require further inquiry in order to define them precisely.”

The Union also addressed, however, the role of the Student Services Assistant in dealing with problems that arise in the peer tutoring relationship. I recognize that the College suggests that this is no more than an occasional activity and that the “definition” of such problems does not in any event “require further inquiry in order to define them precisely.” The College acknowledged, however, that it may be necessary for the incumbent to question both the tutor and the student learner in such circumstances to discover the nature of the problem. Although the Union’s evidence did not demonstrate the frequency with which this occurs, I am satisfied that the Union established that the Student Services Assistant must at times make “further inquiries” in order to “define” the real nature of a problem encountered in the peer tutoring relationship, as contemplated by the Level 3 factor definition.

The Level 3 factor definition, however, also speaks to the solution of problems through “the analysis and collection of information, some of which may be obtained from areas or resources which are not normally used by the position.” “Analysis” is defined as follows: “to separate into parts and examine them in relation to basic principles to determine how they fit together or cause the problem.” In contrast, Level 2 “analysis or problem solving is straightforward,” and “solutions may require modification of existing alternatives or past practices,” as defined. The Notes to Raters state that Level 3 solutions may require the gathering of “more information” which will, “in many circumstances . . . be readily available.” They further indicate, however, that at Level 3, “there will be times when the position will need to seek the additional information from a source it is unfamiliar with.” The Notes clarify that “wording in a PDF that suggests . . . a need to get additional information, such as problems that require the incumbent to look at several sources of information or ask questions of other departments, does not necessarily mean that level 3 would apply. . . . There may be some judgement (level 2) in deciding which step to try first, but the analysis, if any, is quite straightforward (level 2). For level 3, the incumbent would be gathering information, analyzing each new piece of information in relation to the other pieces, and possibly exploring new or unusual directions to seek more information based on the results of the investigation or analysis.” (at p. 16) The Manual further provides that such notes “must be followed.” (at p. 7)

The Union argued that a number of examples to which it referred reflect problem solving and analysis properly rated at Level 3. It emphasized in particular that the grievor has on a number of occasions been faced with urgent requests for a tutor not immediately available on the resource list. While the Union suggested that the grievor would normally contact a faculty member where there is a need to access a tutor, the grievor explained that in urgent situations, she has contacted the appropriate Program Coordinator to do so more quickly than would otherwise be the case. In my respectful view, this does not demonstrate problem solving accomplished through the “analysis and collection of information, some of which may be obtained from areas or resources . . . not normally used by the position.” First, it is not entirely clear to me that a Program Coordinator can, in these circumstances, be regarded as an “area or resource . . . not normally used by” the Student Services Assistant. Further, even if the incumbent is

properly regarded in this scenario as “collecting” information from “areas or resources which are not normally used by the position,” the Union has not demonstrated that such problem solving requires “analysis,” as defined, of such information.

I have carefully considered all other examples relied upon by the parties in addressing the Union’s submission that the Student Services Assistant is required to engage in Level 3 Analysis and Problem Solving. The Union referred in particular to the role played by the incumbent in handling inquiries of international students seeking employment on campus. It addressed as well the need for the Student Services Assistant to deal with difficulties experienced by tutors in securing appropriate space for tutoring. Another example emphasized by the Union involved the role played by the Student Services Assistant in relation to problems in tutoring relationships. After considering both parties’ positions, however, I must conclude that such “analysis” or “problem solving” is “straightforward” and involves providing well established information and reinforcing existing policies and procedures. The examples before me do not in my view demonstrate problem solving through “the analysis” of information, “some of which may be obtained from areas or resources which are not normally used by the position.”

I am therefore not satisfied that the Student Services Assistant position should be rated at Level 3, Regular and Recurring, and nor am I convinced that there is any basis upon which the PDF content should be amended, assuming without finding that I would have the jurisdiction to do so in the appropriate circumstances.

GUIDING/ADVISING OTHERS

The College rates this factor at Level 2, Regular and Recurring. The Union seeks a rating of Level 3, Regular and Recurring.

The Manual defines Level 3 Guiding and Advising as follows: “Advise others to enable them to perform their day-to-day activities.” “Advise” in turn, is also defined: “has the authority to recommend, or provide knowledgeable direction regarding a decision or course of action.” The Level 2 factor definition, in contrast, reads: “Guide others so they can complete specific tasks.” “Guide” is defined in the following manner: “demonstrates correct processes/procedures for the purpose of assisting others with skill development and/or task completion.”

The Union's initial position as set out in its Brief filed in advance of the hearing was that a rating of Level 3 is warranted on the basis that the Student Services Assistant is regularly required to advise the student office worker so as to enable him or her to perform day to day activities. At the hearing, however, the Union acknowledged that the incumbent "guides" the student office worker so that he or she "can complete specific tasks," within the meaning of the Level 2 definition.

The Union argued, however, that this contrasts with other roles played by the Student Services Assistant which it asserts justify a Level 3 rating. I have considered all examples upon which it relied.

The Union referred to "ongoing orientation and guidance to Peer Tutors and Student Learners" by the Student Services Assistant. It addressed the incumbent's role in meeting with and orienting Student Learners and Student Tutors and in receiving their applications. It noted that the incumbent provides them with information regarding the program and in the case of Tutors, regarding such matters as the Time Management Payroll System, and training sessions, in which the Student Services Assistant is not involved.

Similarly, the Union addressed the role of the Student Services Assistant in dealing with problems that arise in the tutor-student learner relationship, a role characterized as no more than occasional by the College. The Union spoke by way of example of student learners who have expectations beyond the parameters of the program. It may be necessary, in such instances, the Union explained, for the Student Services Assistant to reinforce the policies of the program. The Union also addressed situations in which either the tutor or learner indicate that the other is failing to meet as agreed, and the resulting need for the incumbent to remind the individuals involved of program policies or to assign a new tutor. The Union did not argue that the incumbent is responsible for the management of tutor performance. It suggested, however, that she does not merely "guide others so they can complete specific tasks," but rather, "advises" tutors so that they can perform their "day-to-day" teaching activity, and student learners so that they can engage in their "day-to-day" activity of working toward academic success.

The Union also focused on the role of the Student Services Assistant in the Work Study Program. The Union did not dispute the College's assertion that there are well defined procedures and processes to be followed by applicants and hiring managers. It argued, however, that despite these, there is an ongoing need for the incumbent to "advise" applicants of program criteria and job search procedures and hiring managers of job posting procedures and processing of contracts so that they can "perform their day-to-day activities." The grievor referred by way of example to hiring contracts missing information or signatures, or the failure to follow payroll procedures, suggesting that she must in such circumstances "advise" managers so they can perform their day-to-day activities. She described as well that she sometimes receives contracts due the next day after mail has been picked up, and she must therefore find an alternate means of submitting contracts on time.

The College, in response, maintained that the essence of the grievor's role in such areas is to provide guidance to permit the completion of specific tasks. It disputed that the Student Services Assistant has Level 3 responsibilities in respect of any of the people with whom she interacts in the course of her duties as contemplated by the factor definition. The College specifically addressed the role played by the incumbent with respect to the tutoring program. It acknowledged that the Student Services Assistant shares well established information with tutors and learners at the time of orientation, but suggested that once a match is established between a tutor and student learner, she plays no regular role in support of the "day to day" tutoring activities and learning process. While the College acknowledged in the PDF that the Student Services Assistant provides "ongoing guidance . . . to ensure services provided are following set policies and procedures . . . ," it suggested that this entails providing guidance to allow for the completion of specific tasks. Should there be "anything other than obvious concerns," these would be addressed by the Coordinator of Counselling Services.

The College addressed as well the role played by the Student Services Assistant with respect to the Work Study Program, and suggested that she provides information to hiring managers and to applicants about various deadlines and requirements, such as instructions with respect to filling out necessary forms.

After considering the submissions of the parties and the examples referenced by both parties, I am not convinced by the Union that the Student Services Assistant “advises others to enable them to perform their day-to-day activities,” but rather find that her role is more one of providing guidance to others so “they can complete specific tasks.” The Union relied in part upon the grievor’s involvement in the initial orientation and documentation associated with the Peer Tutoring program, and in my view, this exemplifies task oriented guidance. Similarly, although there is no dispute that the grievor may come to be involved in issues between tutors and student learners, her role in this regard cannot be said to involve “the authority to recommend or provide knowledgeable direction regarding a decision or course of action” that enables the participants to perform their “day-to-day activities.” Likewise, the grievor’s role with respect to the Work Study Program must be viewed in a similar fashion. While there is no doubt that she guides others so that they can complete specific tasks such as the completion of the necessary paperwork, the evidence before me does not demonstrate that she “advises” others to enable them to perform their day-to day activities.

I am unable to find that there is any basis upon which to amend the content of the PDF or that a Level 3, Regular and Recurring rating is warranted.

PHYSICAL EFFORT

The College rates this factor at Level 1, Regular and Recurring. The Union does not dispute such rating, but seeks a rating of Level 2, Occasional as well.

The Manual defines Level 2 as follows: “The position requires moderate physical effort.” In turn, “moderate” is defined to include “pushing, pulling or lifting heavier objects (5 – 20 kg or 11 – 44 lbs).”

The Union suggested that the Student Services Assistant is required to handle boxes containing copier paper, job postings, academic calendars, career magazines and the like, and there is no dispute between the parties that these weigh between five and twenty kilograms. I note that the grievor advised in these proceedings that she does not lift boxes of copier paper, but simply removes individual packages of paper from the larger box.

The Union addressed the circumstances which it suggests warrant the occasional rating sought. It indicated that Receiving Department staff delivers materials to the Student Services office approximately weekly. If the grievor is not in the office at the time, boxes are deposited in “the usual spot” such as the storage room if space permits, or if this is not possible, in the “best possible location” where they pose no safety risk. If she is in the office when a delivery arrives, Receiving staff place the boxes in whatever location she requests. The grievor stated that even when boxes are left in an appropriate location, at times she moves them. She suggested by way of example that she lifts them to place them on chairs.

Publications such as academic calendars and career magazines are displayed on shelves in the Resource Library located a short distance from the grievor’s work area. The grievor replenishes supplies in the Library approximately weekly, suggesting that she would put eighteen to twenty calendars on display at a time.

The Union’s position is that the Student Services Assistant position “requires moderate physical effort” as defined in the Job Evaluation Manual in two situations. First, in the Union’s submission, the position is required to move boxes within the designated weight range where they are not left in the appropriate place by Receiving. The evidence before me does not support such assertion in my view, given the grievor’s acknowledgment that boxes are left in the “best possible location where there is no safety risk” when she is not in the office to accept the delivery, and that they are left in the location of her choosing when she is in the office at the material time. To the extent that the evidence demonstrated that the grievor may at times move boxes delivered by Receiving staff from the floor to a chair by way of example, there is no basis upon which I can conclude that such physical effort is “required” as contemplated by the Level 2 definition.

The Union also suggested that the Student Services Assistant is required to move boxes in order to display publications in the Resource Library. The grievor described that she moves the necessary boxes closer to the library when replenishing the shelves. She fairly acknowledged, however, that she could simply carry small bundles of the necessary publications from the boxes to the library, just as she removes individual packages of paper from the large box of copier paper rather than attempting to move the

entire box. While I accept that this may necessitate more trips back and forth, and that some efficiency in the performance of this task may thereby be sacrificed, I cannot accept that in these circumstances the performance of the duties of the Student Services Assistant position “requires moderate physical effort” as defined.

I am not convinced that there is any basis upon which the content of the PDF should be amended as it relates to this factor, and I am not persuaded that the Student Services Assistant position should be rated at Level 2, Occasional in addition to the rating of Level 1, Regular and Recurring.

WORKING ENVIRONMENT

The Student Services Assistant position is rated at Level 1, Regular and Recurring for this factor. The Union does not dispute such rating, but seeks an Occasional rating at Level 2 as well.

The Manual defines Level 2, Working Environment as follows: “Working conditions involve: . . . verbal abuse” “Verbal abuse” in turn is defined as “derogatory or threatening comments.” The Manual also addresses the meaning of “occasional,” stating: “The term ‘occasional’ can be considered in a few different time frames. It can be defined as once or twice a month or three or four times per year. It is important to remember that this term is to be considered when identifying significant skills or responsibilities associated with activities that occur for a short period of time, on a few occasions or sporadically throughout the year.” (at p. 6)

The Union did not challenge the content of the March 2008 PDF with respect to Working Environment, but rather, expressly relied upon the examples set out therein. The March 2008 PDF sets out two examples of “dealing with abusive people.” First, it notes “occasional angry client who may be verbally abusive,” characterizing this as “infrequent,” as opposed to “daily”, “weekly,” or “monthly.” Second, it references monthly “dealing with students under stress or in crisis who pose a threat to themselves or others.”

The College, in response, emphasized that the Union bears the onus of establishing that the disputed rating should be amended. Counsel suggested that the PDF should not be read in a rigid and legalistic fashion so as to justify a higher rating which

the Union fails to prove warranted. In any event, in his submission, “infrequent” encounters with the “occasional angry client” who “may” be “verbally abusive” are insufficient to satisfy the Level 2 definition set out in the Manual. He further maintained that there is no basis upon which I can find that this is a “significant” responsibility, so as to justify an occasional rating here. Counsel for the College urged me to construe the PDF language in issue with some latitude, and in light of the Union’s evidence in these proceedings, which he suggested established only that the Student Services Assistant may encounter angry students or clients. This, in his submission, cannot be equated with dealing with “verbally abusive” individuals as defined.

I accept the College’s position that the PDF must not be read in a rigid and legalistic fashion, and that I must consider the provisions of the Manual and the evidence before me in these proceedings as well. That said, it is not open to the College at this stage of the proceedings to effectively ask me to disregard examples included in the PDF when determining appropriate rating, particularly considering the Notes to Raters which state that “this factor reflects working conditions that are real. . . .” (at p. 32)

The PDF expressly reflects that the Student Services Assistant deals infrequently not only with occasional “angry clients,” but specifically, with “angry clients” who may be “verbally abusive.” After considering the Union’s evidence in light of the relevant provisions in the Manual and in light of the express recognition in the PDF that the working environment includes “infrequent” exposure to “verbal abuse,” I am satisfied that an Occasional rating of this factor at Level 2 is warranted, and I so order.

Conclusion

For all of the reasons set out herein, the grievance is allowed to the extent indicated, but is otherwise denied. The rating of the Working Environment factor is to be amended forthwith in accordance with my findings herein, and in that respect, the grievance is allowed. To the extent that the grievance asserts that the rating of the Analysis and Problem Solving, Guiding/Advising Others, and Physical Effort factors should be modified and that the content of the PDF as it relates to those factors should be amended, it is denied. Based on these findings, I conclude that the Student Services Assistant position is properly classified at Payband D.

DATED AT TORONTO, ONTARIO this 14th day of October, 2008.

“M. Tims”

Mary Lou Tims
Arbitrator