IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE MINISTER OF HUMAN RESOURCES
(GOVERNMENT OF THE NORTHWEST TERRITORIES)

Employer

-and-

THE UNION OF NORTHERN WORKERS

Union

RE: GRIEVANCE #18-P-00247
JOB EVALUATION APPEAL

AWARD

BEFORE:	Tom Jolliffe, Q.C.
FOR THE EMPLOYER:	Sarah Kay
FOR THE UNION:	Michael Penner
HEARING DATE:	September 12 and 13, 2018
HEARING LOCATION:	Yellowknife, Northwest Territories

DATE AWARD ISSUED:
November 29, 2018

My File:
53,237

It is common ground between the Parties that the Government of the Northwest Territories in its analysis and evaluation of work for purposes of determining the relative/comparative value of positions within its organizational structure utilizes the Hay Method. It is the widely accepted gender-neutral job evaluation system focussing on the described responsibilities and working requirements as opposed to examining the individual ability or performance qualities brought to the position by the incumbent. There is no doubt about the GNWT using written job descriptions for benchmarking purposes across its system. Changes to job content, perhaps brought about by a change in assigned responsibilities, or departmental reorganization, can lead to another evaluation concerning which individual employees may or may not agree with the results, or perhaps not agreeing with the results of a long-standing initial position job evaluation which has not been redone. That state of affairs sets the stage for a possible job evaluation appeal able to be triggered by the position incumbent under Article 36.

This matter concerns grievance #18-P-02247, a policy grievance, wherein the Union has alleged a contravention of Article 36.04 subsisting in its current form since the collective agreement expiring on March 31, 2012. The language changes to Article 36 had been negotiated during the 2009 round of collective bargaining. Article 36.04 in its entirety now reads as follows, with my having emboldened the paragraph 1(a) additions said to be particularly pertinent to this policy grievance involving the Job Evaluation Appeal Board involvement:

> (1) (a) Employees shall file job evaluation appeals directly with their Deputy Head. **At the same time as filing the appeal, the employee may provide any written documentation demonstrating that the employee**:
>
> **(i) was substantially performing new or changed duties of a higher position, and**
>
> **(ii) raised these concerns with the Employer.**
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> **The employee may appeal their job evaluation without submitting written documentation referenced in (i) and (ii).**
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> The Deputy Head shall refer the appeal to a Job Evaluation Appeal Board.

(b) The Job Evaluation Appeal Board shall consist of two representatives of the Employer and two representatives of the Union. All members of the Job Evaluation Appeal Board must be trained on the use of the Job Evaluation System.

(c) The Job Evaluation Appeal Board may sit in Yellowknife or at some other place in the Northwest Territories that may seem appropriate to the Board under the circumstances. The Board shall give the employee and/or the employee's representative an opportunity to be heard and to explain the reason(s) for the appeal.

(d) The Job Evaluation Appeal Board may by a unanimous decision, either determine that the employee's evaluation is proper or determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position.

(e) The unanimous decision of the board is binding on the Employer, the Union and the employee until such time as that employee has been promoted, transferred, or the job description is changed by the Employer and has been re-evaluated.

(2) (a) Should the Job Evaluation Appeal Board be unable to reach a unanimous decision, the employee may withdraw the appeal or request that the Deputy Head refer the appeal to a Job Evaluation Review Board.

(b) The Job Evaluation Review Board shall consist of a representative of the Employer, a representative of the Union and an independent chairperson. All members of the Job Evaluation Review Board must be trained on the use of the Job Evaluation System.

(c) The Chairperson of the Job Evaluation Review Board shall be chosen by the Employer and the Union, where they fail to agree on the appointment of a Chairperson, the appointment shall be made by the Supreme Court of the Northwest Territories upon the request of either party.

(d) The Job Evaluation Review Board may sit in Yellowknife or at some other place in the Northwest Territories that might seem appropriate to the Board under the circumstances. The Board shall give the employee and/or the employee's representative an opportunity to be heard and to explain the reason(s) for the appeal.

(e) The Job Evaluation Review Board may, by a majority decision, either determine that the employee's evaluation is proper or the Board may, determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position.

(f) The majority decision of the Board is binding on the Employer, the Union and the employee until such time as that employee has been promoted, transferred, or the job description is changed by the Employer and has been re-evaluated.

The Union understands the Employer's position to be that the Job Evaluation Appeal Board process involves examining the job description as written, or possibly rewritten and updated by the Employer, and not taking into consideration, other than for retroactivity purposes, an employee's having submitted documentation and oral information meant to demonstrate that he or she are/were substantially performing new or changed duties, perhaps even those of a higher rated position. Plainly, the Union does not see it as just a matter of considering the written job description to provide the singular governing parameters of the Job Evaluation Appeal Board's investigation.

In citing Article 36.04(1)(a) of the Collective Agreement the Union asserts that the evaluation appeal process at the point of being referred to the Appeal Board encompasses the incumbent having raised his or her concerns, providing any written documentation which might be available demonstrating substantial performance of new or changed duties including when compared with the written description itself, and being prepared to provide an oral presentation to the Appeal Board in support. Following Article 36.04(1)(a), by the Union's assessment, is not just a matter of establishing retroactivity for a reassessed job by singularly referencing the written job description as the Employer has indicated. As it currently stands, the Employer has confirmed its position stated in answer to the policy grievance that the Appeal Board's emphasis should be on the written job description, standing as it does as the system benchmark for the work being done by any incumbent.

By way of one recognizing the pertinent lead-in contract language, Article 36.02(1) provides that during the term of the collective agreement "the Hay Job Evaluation Guide Charts, in

conjunction with benchmark positions as set out in the Job Evaluation Manual, will be used for assessing the value of positions to which employees are assigned," with the job evaluation manual including guide charts to be provided on request. Article 36.03(1) provides that when an employee believes that his or her position has been improperly evaluated, prior to filing a formal job evaluation appeal, "the employee is encouraged to discuss the evaluation of his/her position with his/her supervisor or a representative of management who is knowledgeable in the job evaluation system". It is followed by paragraph (2) which states that "upon request the employee shall be provided a copy of the job description for his/her position together with the point rating and the rationale supporting the point rating assigned." It is at that juncture, after presumably receiving an unacceptable answer, that the Article 36.04 formal appeal mechanism available to individual employees comes into play.

It is also necessary to observe that at the time of the 2009 round of collective bargaining the Parties had long since (dating back to at least the 2005 expired collective agreement) entered into a Memorandum of Agreement (MOA) referencing the Hay Job Evaluation Guide Charts in conjunction with benchmark positions as providing for gender-neutral job evaluations and agreeing to the establishment of the Job Evaluation Appeal Board as described therein. The MOA is set out below in its entirety:

> The parties agree that the Hay Job Evaluation guide charts when used in conjunction with set benchmark positions either set out in the Job Evaluation Manual or to be included therein, must be such as to provide for gender neutral job evaluations. The parties also agree that the job evaluation appeal process under Article 36 of the Collective Agreement has been devised to provide a joint and independent process for ensuring that each individual job evaluation result is gender-neutral.
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> Therefore, the parties agree to the following process:
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> (1) The Deputy Head shall, at the end of each month, refer all appeals that have been received in the applicable month to a Job Evaluation Appeal Board under Article 36.04(1).
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> (2) The Job Evaluation Appeal Board shall group positions under appeal that may be the same or similar and select one or a small sample of positions to determine whether the evaluations are proper. If a unanimous evaluation decision is not reached, the selected position(s) shall be referred to the Job

Evaluation Review Board for a majority evaluation decision.

(3) The Deputy Head shall implement the evaluation decision in (2) above for the selected position(s). The Deputy Head shall also forward the evaluation decision from (2) above along with all the other positions under appeal in (2) above to the appropriate Departmental Job Evaluation Committee. The Departmental Job Evaluation Committee shall examine the evaluations for all the other positions under appeal taking into account the evaluation decision in 2 above. The Job Evaluation Committee shall also examine the evaluations for other positions that might be impacted by the evaluation decision in (2) above. The Job Evaluation Committee shall forward the results of its examination of the job evaluations for the other positions under appeal and other impacted positions to the applicable immediate supervisor.

(4) The Immediate Supervisor or a representative of management who is knowledgeable in the Job Evaluation System shall discuss the evaluation results from (3) above with the employee. The employee has the right to accept the results, or, in the case of a position already under appeal, ask that the appeal be pursued under Article 36.04 and, in the case of an impacted position, appeal the evaluation decision. If accepted, the results will be implemented in the same manner as the decision(s) in (2) above were implemented. If the results are not accepted, the original appeal or a new appeal as applicable will be decided under Article 36.04.

The parties further agree to compile and update an addendum to the Job Evaluation Manual that contains all the decisions with respect to job evaluation appeals. The addendum shall contain the job description, organization chart, the job evaluation string results and rationale for each appeal decision. The addendum shall become an additional tool to assist the Departmental Job Evaluation Committees with the evaluation of positions and the Job Evaluation Appeal and Review Boards in deciding future appeals under Article 36.04

Certainly, the MOA addresses the significance of gender-neutral job evaluations including with respect to the job evaluation appeal process under Article 36, said to be "devised to provide a joint and independent process for ensuring that each individual job evaluation result is gender-neutral". Notably, the MOA requires evaluation committees to examine the evaluations of positions that might be impacted by the Appeal Board decision, no doubt keeping in mind the significance of consistency and benchmarking positions across the system. It also requires that the Evaluation Manual contain the results and rationale for each appeal decision, expected to become a tool to assist in determining future job evaluations. It contemplates the grouping of positions under appeal, meaning where they are the same

or similar. It does not alter the ability of an individual incumbent to proceed where the possibility for grouping does not arise.

Be that as it may, the Union's case focuses on the parameters and significance of the information allowed to be provided under Article 36.04(1)(a) in the Appeal Board dealing with appeals brought by individual employees concerning their particular situations. The Union contends that its plainly worded language invites the employee to present written information in the job appeal process, meaning in the probative sense, which one might expect could conceivably add additional assessable aspects to the job being worked and thereby affect the scoring under the Hay Method, in addition to making their oral presentation to the Appeal Board. The Union would have one particularly note that Article 36.04(1)(a), having invited the appellant to provide written documentation to the job appeal panel to be considered by it, presumably recognizes there could be information having implications beyond the published job description itself. Such information is therein described as "demonstrating", which is to say addressing the issue of whether the employee was substantially performing new or changed duties of a higher position were these concerns to have been raised with the Employer. It also contends that the remainder of Article 36.04(1) falls in line with this approach, for example paragraph (d) refers to the possibility of the Appeal Board determining that the employee has been improperly evaluated in his/her position and paragraph (e) indicating that the Appeal Board decision is binding until such time as the employee has been promoted, transferred, "or the job description is changed", i.e., presumably meaning changed to reflect the work being done in one's position.

The Employer responds that the job evaluation appeal process is essentially an appeal of the position evaluation, reevaluating what is already in place at the time of the appeal, namely as written, i.e., a matter of examining the content of the work contemplated by the published job description, whatever it might be, as opposed to incorporating some or other self-described duties into its assessment and scoring, and hence into the position evaluation. Self-described work not contained in the existing job description should be excluded from the Appeal Board's consideration. The appeal process should not be a matter of evaluating an individual's performance in the job, including the possibility of doing more than the job description contemplates or requires, but involves determining the proper evaluation to be gleaned from the position description document containing the pertinent duties and responsibilities. The Employer contends that it is only these known duties and responsibilities which should be examined as

to proper scoring. It further asserts that Article 36.04(01)(a) should be read in conjunction with Article 24.11 which addresses retroactive pay rate changes in the context of positions being re-evaluated as a result of a change in duties and responsibilities associated with the position itself. Article 24.11(1) reads as follows, with my having embolded the language changes first appearing in the 2012 expired collective agreement and remaining current:

> (1) (a) Where a position is re-evaluated as a result of a change in duties and responsibilities and the maximum rate of pay of the new pay range exceeds the maximum rate of pay of the old pay range, the incumbent of the position will be paid at the step in the new pay range which provides him/her with an increase in salary that is nearest to but not less than the difference between step 1 and step 2 of the new pay range.
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> (b) Where a position is re-evaluated and there have been no substantial changes in the duties and responsibilities of the position and such, evaluation has resulted in a higher pay range, the incumbent of the position re-evaluated will be paid at the same step in the new pay range as they were in the old pay range.
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> (c) The effective date of a re-evaluation that results in an increase in pay shall be the date upon which the employee began to substantially perform the new or changed duties, but in any event no retroactivity shall be paid for any re-evaluation adjustment that extends beyond sixty (60) days prior to the filing of a grievance or a job evaluation appeal, whichever is earlier, **except as provided below.**
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> **If the employee has provided documentation under article 36.04(1)(a), dated earlier than either the re-evaluation or sixty (60) days prior to a grievance or appeal being filed, the Employer shall consider an adjustment to the employee's pay retroactive to that earlier date. Such adjustment shall not be unreasonably denied.**

The Employer takes the reference to "documentation" in Article 36.04(1)(a) as flowing from the Article 24.11(1)(c) reference to a situation where the position incumbent has provided earlier dated documentation contemplated by 36.04 (1)(a) thereby requiring the Employer to consider a retroactive adjustment for any resulting re-evaluation in line with the earlier dated documentation, meaning retroactivity concerning a written job description. The overall conclusion should emerge that the job evaluation being appealed, as filed with the Deputy Head and then referred to the empowered Job

Evaluation Appeal Board, does not involve an assessment of anyone's individually worked/assigned duties but comes down to determining the proper evaluation for the position itself by reference to the published job description and the described duties coming within that document. The Employer contends that were an employee to be concerned over their duties possibly extending outside an evaluated (or re-evaluated) job description, it is a matter of addressing the proper application of Article 34.01, by filed individual grievance if necessary. It reads as follows:

> When an employee is first engaged or when an employee is reassigned to another position in the Bargaining Unit, the Employer shall, before the employee is assigned to that position, provide the employee with a current and accurate Statement of Duties of the position to which he/she is assigned.
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> Upon written request, an employee shall be entitled to a complete and current Statement of Duties and Responsibilities of his/her position, including the position's job evaluation level and point rating allotted by factor, where applicable.

While the Union asserts that the Appeal Board can "assimilate information and add to the existing job position" on an individual case basis in assessing points in order to provide accurate Hay Method scoring on the assigned work being performed, the Employer would answer in the negative. The Employer relies on the overriding significance of the published job descriptions constituting position benchmarks to be applicable to those incumbents across its system holding identically described positions and needing clarity on that basis. There is no invitation for the Appeal Board to consider any individualized duties' not contemplated to be performed thereunder. The Employer views it to have no authority to rewrite the job description or import any words into it. As counsel put it: the Appeal Board "cannot read in any added duties" not covered by the written job description, rather doing its assessment strictly within the confines of the authorized job description, essentially a reconciliation of the job description itself.

....

There was evidence from both sides dealing with their representatives' divergent understanding and past experience, including some negotiating history, concerning how the Article 36.04 process should work in the context of other contractual language and the Hay Method itself. Even were there to be no ultimate finding of an existing ambiguity needing to be resolved, such evidence is admissible on the basis of one needing understand this contractual language driven dispute in context – its "factual matrix" as

that term has come to be understood through such cases as the Supreme Court of Canada's judgement in *Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, [2006] 1 S.C.R. 744 and the Court of Appeal for Ontario's judgement in *Dumbrell v. Regional Group of Companies Inc.* (2007), 279 D.L.R. (4th) 201. As more recently considered in *Creston Moly Corp. v. Sattiva Capital Corp.*, 2014 SCC 53, which in relying on its earlier pronouncement in the *Jesuit Fathers* case, the Supreme Court stated: "the interpretation of contracts has evolved into a practical common sense approach not dominated by technical rules of construction (and) the overriding concern is to determine the intent of the parties and scope of their understanding". It would include reading the language under review in the context of the collective agreement as a whole and giving the words used their ordinary and grammatical meaning consistent with the surrounding circumstances known to the Parties at the time of formulating the language, which in our case included Article 36.04 and Article 24.11 both being partially rewritten during the 2009 contract negotiations. One's needing to consider contextual factors has been acknowledged by labour arbitrators. See for example arbitrator Burkett's award in *Air Canada and Air Canada Pilots' Association*, unreported March 1, 2012, in his stating at page 27 "the objective must always be to find the meaning of the disputed language within the context of the particular collective bargaining relationship", citing the *Dumbrell* judgement at some length in summarizing at p. 29: "the Court could not have been more clear in directing that even where there is no ambiguity an expansive contextual analysis be undertaken where there exists a dispute as to the interpretation and/or application of contractual language".

The Union's first witness, Avery Parle has held a term position as Service Officer with the Union since 2017. Having successfully completed the two-day Hay Method training program, he currently sits on the Job Evaluation Appeal Board as the Union designate. In describing his experience as an Appeal Board member he recalled an appellant employee in 2017 providing information indicating that he was regularly performing duties outside the published job description by which the position had been earlier evaluated. Mr. Parle recollected that the Appeal Board's discussions in caucus did not cause a change to the evaluated points for the job, even after considering the true scope of duties the incumbent was performing. The Appeal Board members were able to agree that the existing Hay Method evaluation was appropriate in the end result. However, according to Mr. Parle, it became apparent during their discussions that the Appeal Board members disagreed on the significance of the incumbent's input and

whether his job should be assessed "as written" or "as described" by him. He testified that either way they found common ground in terms of where the assessment should fit. Such was the situation even if they could not agree whether the existing job description "should be added to by employee description", being the Union's position in seeking to individualize the assessment process to some degree. Mr. Parle testified that he was left wondering why the Appeal Board would bother to provide the incumbent with a hearing if they were not going to consider the additional information he provided as having a possible impact on the job evaluation appeal in their applying the Hay Method scoring system.

The second job evaluation appeal which Mr. Parle described did not result in any consensus concerning the Hay Method points to be scored in a situation where he assessed the information received to show that the incumbent was regularly performing duties outside the written job description, essentially having more substantive responsibilities than set out therein. He recalled that even the reporting structure being applied to the individual appellant presented an issue when compared to what was set out in the organizational chart, but the Employer representative took the position that the re-evaluation considerations must be limited to the written job description. In that situation there was no consensus reached by the Appeal Board with the matter being referred to the Job Evaluation Review Board without success. There followed an email string between Mr. Parle and David Mathison, Advice and Adjudication Manager in Labour Relations, who provided the Employer's response to Mr. Parle's inquiry respecting the significance of Article 36.04(1)(a)(i) for an employee able to provide written documentation at the same time as filing the appeal showing that he or she was substantially for the new or changed duties of our position, having already raised these concerns with the Employer. Mr. Mathison stated the following:

> *First of all as indicated previously Article 36.04 outlines how an employee files an appeal as well as how the process works, with respect to your question: "Could the employer please provide the union with it's interpretation of article 36.04(1)(a)(i)?"*
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> *Article 36.04(1)(a)(i), should be read together with 36.04(1)(a)(ii) as the provisions are joined by the "and (as highlighted below for emphasis) at the end of the former and read as part of the entire clause. When doing so it is evident that the first sentence included 36.04 (1)(a) indicates how and to whom the employee should file an appeal with:*
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> *"Employees shall file job evaluation appeals directly with their Deputy Head."*

The next sentence and two sub-clauses provide an opportunity for the employee/appellant to, at the time of filing the appeal, supply any documentation that would support a point in time for when the employee/appellant took issue with the current point rating or evaluation:

"At the same time as filing the appeal, the employee may provide any written documentation demonstrating that the employee:

(i) was substantially performing new or changed duties of a higher position, and
(ii) raised these concerns with the Employer."

As such; 36.04(1)(a)(i)&(ii) specifically assists in establishing, through supplied written documentation by the employee/appellant, how (i) and when (ii) the employee believes they were performing new or changed duties that they contend have not been evaluated properly, identifying a potential point of retroactivity in conjunction with and as referenced in Article 24.11(1)(c).

The sentence immediately following the two sub-clauses identifies that an employee does not need to supply any written documentation if they so choose, if not; this would then set the date of the appeal (or 60 days prior as referenced in 24.11(1)(c)) as triggering the point of retroactivity.

Here again this sentence affirms that 36.04(1)(a)(i)& (ii) should be read together:

"The employee may appeal their job evaluation without submitting written documentation referenced in (i) and (ii)."

I hope this clarifies the Employer's interpretation for the union.

It can be observed that Mr. Mathisen in dealing with Article 36.04(1)(a) specifically mentioned the assistance able to be provided by submitting written documentation having a twofold application. He described it as "how (i) and when (ii) the employee believed they were performing new or changed duties..." going on to reference the possibility of retroactivity under Article 24.11(1)(c), to be "read together." This explanation did not directly address the issue of what weight, if any, could be placed on the employee's claiming to have been working outside the written job description.

Mr. Parle responded to Mr. Matheson, in setting out his concern followed by the Union filing this policy grievance, namely that the Employer representatives on the Appeal Board were refusing to consider any information that was not included in the written job description in determining whether the

incumbent was performing new or changed duties. They were holding to the position that the appeal process only covered the job description "as written". The problem had become actualized, Mr. Parle explained, in that the most recent appellant believed she was performing new or changed duties that were not adequately described by the job description or evaluated properly for that reason. One observes that from the employee's perspective her job description was part written and part unwritten, whereas the Employer was considering any new information to be purely a matter of applying retroactivity pertaining to the written job description itself, and only the written job description, by reference to the Article 24.11(1)(c) retroactivity provision.

In his testimony, Mr. Parle also referenced Article 34.01 describing the incumbent employee's entitlement to a current statement of duties and responsibilities of the position, including the job evaluation level and point rating. By Mr. Parle's understanding, it would be upon receipt of such information that the incumbent who might disagree with the accuracy can access the Article 36.04(1) job evaluation appeal process. Indeed, as Mr. Parle described it, the Union sees no other mechanism for that kind of review where by Article 36.04(1)(a) one is allowed to demonstrate that he or she has been substantially performing new or changed duties, including providing or not providing written documentation in support. This avenue becomes available following the encouragement provided under Article 36.03, and presumably acted upon, for one to first discuss the evaluation with his or her supervisor or management representative knowledgeable in the job evaluation system, but not resulting in a successful resolution of the position evaluation issue at that early stage.

In cross-examination Mr. Parle acknowledged being familiar with GNWT job description documents signed off by the Deputy Head as with any revamped job description, and at that point amounting to a new job description. By his experience, a job description should normally contain "anything substantial", not perhaps every single aspect of the function, and is subject to some change over time, perhaps additional responsibilities being added, which admittedly can lead to an updated job evaluation. He agreed that the purpose of a rewrite at some point is to ensure the statement of duties accurately reflects the job, but adding that the employing department in some cases may be slow or not inclined to act, or disagrees with the overall import of the changes. Article 36.04 provides an individual course of action outside the formal grievance process. He indicated that the physical evidence coming to the Appeal Board, in addition to an incumbent's Article 36.04(1)(a) documentation, is the job

description as written and signed off by the Deputy Head. By his understanding it becomes a matter of the Appeal Board considering on all the information provided what job-related functions are actually being performed, relying on factual information provided orally, the job description itself, and whatever other supporting documentation might be available.

It was put to Mr. Parle in cross-examination that the Appeal Board acting on such information and considerations as he described them would amount to it amending the job description, without authority, to include other duties, even declaring the function to be substantially different than the published record. He responded that in some circumstances the Employer has failed to ensure that the published description accurately reflected all the work being done and in such a case the Appeal Board has the authority under Article 36.04 to determine that the employee has been improperly evaluated and apply the proper Hay Method evaluation to the work being performed, which he takes to mean on an individualized case basis. He disagreed that the only remedy in such a situation was under Article 34, meaning to bring a grievance that the job description was not accurate. One notes that under Article 36.04(1)(e) the unanimous decision of the Board is binding until such time as the employee has been promoted, transferred "or the job description has been changed by the Employer and has been re-evaluated", meaning it rests with the Employer to ultimately rewrite the published job description which Mr. Parle does not see as altering the Appeal Board's authority, completely outside the formal grievance process, to issue a unanimous decision respecting the points' assessment for the job being worked at the time of the appeal, and possibly for some time beforehand which he sees to be the tie-in with Article 24.11.

In giving evidence, Mr. Parle was provided with a hypothetical where one employee was working under a job description that was supposedly "inaccurate" for the duties/responsibilities being performed on a substantial basis by that person, whereas another employee had the same job description and was satisfied with it, i.e., its validity not being questioned by the second employee performing under the same published job description. In such a case he sees no bar to the two jobs possibly having a different point rating in recognition of their having been a *de facto* change to the one position by reference to the duties being performed. The Appeal Board's evaluation would remain in place until the written job description was changed by the Employer and re-evaluated. He also agreed that perhaps it "all starts with a proper job description", which does not always occur. In that respect, however, he disagreed that the only proper

remedy where an employee was being assigned to do "extra things", as counsel put it, was through the grievance process in asserting that he or she had not been provided with an accurate job description contrary to Article 34, or decline the duties outside the job description.

Indeed, despite being urged to the contrary, Mr. Parle, by his description, does not see any conflict or difficulty presented by the existence of Article 24.11(1)(c) which he views as addressing the retroactivity issue where an employee has successfully appealed the job evaluation under Article 36.04(1)(a) in having shown through the documentary and discussion process that the re-evaluation should be applied retroactively to an identifiable point in time, meaning as expressly addressed by Article 24.11(1), back to the date when the employee "began to substantially perform the new or changed duties ...". He forecasted that in some cases documentation inevitably will show when it was that the person started performing the duties which presumably should have been already included in the job description and properly Hay Method assessed by the time the dispute arrives at the Appeal Board level.

Ultimately, in Mr. Parle disagreeing that he was suggesting that the Appeal Board should cross over the line of the Employer's management right to set out to the job description as it sees fit, he testified that the Appeal Board has a duty to recognize what functions may have been included and/or added to the employee's duties in the real sense of showing one to be substantially performing higher level duties thereby attracting a Hay Method points' evaluation at that point based on the duties and responsibilities connected to the work being done, and not just the published job description which may prove to be substantively inaccurate. Thus, by his description, the need for contract language in the nature of Article 36.04 is obvious, providing a contractual investigative approach for remedying such a situation.

The Union's second witness, Todd Parsons, is the Union President and for some years dating from the early 2000s sat as the Union representative on the Job Evaluation Appeal Board. He testified it was always his understanding as a sitting member, having heard numbers of cases in that capacity, that they could consider any information, oral or written, covering the full scope of the appellant incumbent's assigned duties and responsibilities. They were not limited to the written job description. By his recollection appellants commonly described working beyond their published job descriptions, sometimes compelling and sometimes found not to be so, in the Appeal Board assessing whether there should be a Hay points' evaluation adjustment. He disagrees with any current Employer position that the Appeal

Board would consider only the job description as written. He testified that while he was an Appeal Board member, they "regularly and routinely" considered the employee's oral description, published job description, supervisory staff description, and any related documentation. He testified that it was in the context of all this information that the Appeal Board would compare the work being performed with other job descriptions in the same family of work in relating it to these other positions, while following the Hay Method evaluation format. By his description the incumbents might well set out to demonstrate that their job descriptions did not contain all the substantive aspects of their job, or even if the job description was accurate it had still been improperly assessed. Sometimes they would bring other job descriptions with them to the hearing which they argued were similar to the work they were actually doing. By his description, it was information which the Appeal Panel was left to consider.

Mr. Parsons testified that he never saw any responsibility resting with the Appeal Board to hold up issuing its decision pending a more up-to-date job description document being issued, rather it was their common practice to evaluate the situation at hand on the basis of evidence received, sometimes requiring that the re-evaluated scoring be applied on the basis of the regular work being performed by reference to the Hay Method criteria as opposed to only relying on the written job description. By Mr. Parsons' recollection, the Appeal Board's expectation on delivering its decision was that the Employer would update the job description to reflect the reality of the Hay Method scoring applied to the work being done by the incumbent in the position. He understood their unanimous decision to be binding until that event occurred.

Mr. Parsons also testified that during the 2009 round of collective bargaining, both the Article 24.11 and Article 36.04(1)(a) changes were negotiated into the new collective agreement, initiated as Union bargaining demands. What was notably missing prior to the 2009 round was the reference to the employee option under 36.04(1)(a) to provide any written documentation to support the case that he or she was substantially performing new or changed duties of a higher position in contending that his or her position had been improperly evaluated, also the Article 24.11(c) retroactivity provision as currently written. He described it as a matter of trying to capture the long-existing practice, meaning where an employee could show there was confirmatory documentation indicating when the duties changed to an extent requiring eventual re-evaluation by the Appeal Board, there should be a retroactivity aspect for the Employer to consider extending back to that point in time, needing as always to be its unanimous

claim for any change to occur in the evaluator.

As Mr. Parsons recalled it, the past practice, including as actioned subsequent to the 2009 change in the language, was always to look at the employee information as being relevant to recommending a possible retroactivity date for the substantially different duties, albeit Article 24.11(1)(c) brought the supporting documentation securely into the picture for establishing that date. He testified that by the Union's understanding the changed wording was simply to codify the long-standing practice of the Appeal Board.

Mr. Parsons also testified that by his recollection during his Hay Plan training, he was told to consider more than just the published job descriptions in considering the Article 36.04 job evaluation appeals launched by individual incumbents. In his testimony he was referred to the latest GNWT, Department of Finance information memorandum sent out to appellants, supervisors, managers and directors in 2015, authored by Job Evaluation and Organizational Design Manager, Jennifer Inch. Therein she explained the Employer's current view on appeal rights, including the hearing of appeals and the evaluation process itself. It can be seen to centre on the Hay Method's ranking jobs in accordance with know-how, problem-solving, accountability, and working conditions, as all contributing to the relative "value" of jobs in the GNWT. In a section entitled "The Evaluation Appeal Process", the memorandum contains the following description:

> *The process of an evaluation appeal involves employees (and possibly representatives) as well as the Supervisor/Manager/Director of the position providing job content information to assist the Appeal Committee/Review Board members in understanding the nature and context of the job under appeal. Employees and management representatives are given an opportunity to make presentations and to hear the presentations of the other party(ies). Appeal Committee/Review Board members may also ask questions about the job.*
>
> *Appeal Committee/Review Board members, as with members of any Job Evaluation Committee, must be satisfied that they understand the nature of the work and the relationship to the jobs above, below and around the one being evaluated. To achieve this goal during a job evaluation appeal hearing, the Committee will rely on a number of sources of information.*
>
> - *Job descriptions. Jobs must be accurately described. It should be noted that the Deputy Head assigns work and that the Deputy Head has the final authority with respect to what each job under their control is assigned to do.*
> - *Current Organization Charts provided by the employer to enhance understanding of the organizational context of the job.*

- *A list of the evaluations of all other jobs in the GNWT against which to rank the job or jobs being reviewed.*
- *Knowledge of the various types and levels of jobs in the GNWT as may be known and understood by the committee members.*
- *Information provided by the incumbent(s) of the job to provide clarity and to answer questions that may assist with the understanding of the job by the committee.*
- *Information provided by the Supervisor, and/or Manager and/or Director responsible for the work unit or division in which the employee works.*

Keeping in mind the following principles:

- *Job Evaluation is the analysis and evaluation of work for the purpose of determining the relative value of jobs.*
- *Job Evaluation provides the foundation of a pay practice that is fair to all employees in the organization.*
- *Jobs are <u>not</u> evaluated to address market issues affecting the compensation, recruitment and retention of individual employees or groups of employees, or to recognize the contributions of individual employees. The goal of Job Evaluation (using the Hay Method) is simply to rank all jobs, in a consistent manner, based on the relative degree to which, <u>competently performed</u>, the jobs impact on the GNWT as a whole.*
- *The focus of the job evaluation process using the Hay Method is on the nature and the requirements of the job itself, NOT on the skills, educational background, personal characteristics, or the current salary of the person holding the job.*

Factual information should be provided about the job that will assist the committee in understanding how much knowledge is required to do the job, what sort of problem solving processes are required to do the job, what the accountability of the jobs is, what the conditions are under which the job is performed and how the job fits into its organizational context.

*Information that **should not** be provided:*

- *Make reference to the skills, work ethic or character of the employee who is incumbent in the job. This is irrelevant since it is the job that is being evaluated, not the employee.*

- *Make reference to educational or experience requirements of the job as this is irrelevant since knowledge, however attained, and the complexity of the knowledge required to do the job, relative to all other jobs, is the focus and not where that knowledge might have come from.*

- *Recommend to the committee that a job be upgraded, downgraded or that it remain the same, as this is for the Committee to determine.*

- *Make reference to what might happen if the employee were to perform the job badly (consequence of error).*

One can observe that in its introductory position, the Employer's explanatory memorandum explains that the appeal committee: "*will rely on a number of sources of information*", going on to include several sources such as job descriptions which must be accurately described, and other information including that provided by incumbent(s) and supervisory/management staff.

Mr. Parsons testified that however the Employer might like to describe the appeal process in its unilaterally issued memorandum, by his understanding and experience with Appeal Board involvement, its evaluations were not limited by inaccurate job descriptions as pertaining to individual appellants, but taking into consideration the work being performed by reference to the Hay Method ranking guidelines. While the Appeal Board, he acknowledged, does not have any authority to correct, rewrite or re-evaluate the GNWT published job descriptions, he has always understood that it can utilize the evidence received to assess the appropriate evaluated points on an individual case basis covering the work being performed. They are sometimes able to provide their ruling as a unanimous decision of the Appeal Board which under Article 36.04(e) is said to be binding "until such time as that employee has been promoted, transferred, or the job description is changed by the Employer and has been re-evaluated". In other words, in their dealing with individual cases, Mr. Parsons does not understand the Appeal Board's authority to be limited by an inaccurate job description as it pertains to the individual employee.

The crux of Mr. Parsons' testimony was that the Appeal Board's authority had always been exercised over the years on an individualized case basis, it being well understood, he thought, that published job descriptions can prove less than accurate in describing a particular individual's assigned duties and job responsibilities by reference to the Hay Method evaluation criteria. He did not suggest that the Appeal Board is involved in assessing educational or experience requirements, skills, work ethic, job commitment, or performance level, or the character of the individual employee.

The Employer's first witness, Jennifer Inch, is the Manager of Job Evaluation and Organizational Design. She issued the Department of Finance information memorandum explaining the Hay Method criteria and the job evaluation appeal process. By the Employer's understanding of the Hay Method, its

gender-neutral approach in the relative ranking of all jobs across the GNWT, points are to be assessed "based on the role and not the incumbent", meaning the relative value of the job itself to the organization reflecting equal pay for work of equal value. She testified at some length concerning the Hay Method parameters as they would apply, with the compartmentalized reference to know how, problem-solving, accountability and working conditions. She explained that it is not a matter of assessing the individual skill or credentials or performance level brought to the job by the incumbent in a position. The parameters to be assessed are those set out in the published job description. The possibility always exists that an employee will not agree with their job evaluated Hay Method points, being encouraged to discuss the situation with his or her supervisor or manager under Article 36.03, and where remaining dissatisfied, invoking the job evaluation appeal process under Article 36.04.

Ms. Inch testified that Employer's approach toward the evaluation appeal process under Article 36.04 is that it must be solely based on the perceived incorrect evaluation of the job as written in the job description at the time of the appeal, there being some 5300 positions in the GNWT covered by job descriptions. For example, if the job description itself, as written, calls for extensive territorial travel which component has been ignored or underplayed in the points evaluation in its reference to that described working condition, the resulting points' shortfall can be rectified within the appeal process relative to the job description itself while awaiting re-evaluation of the position. However where the job description does not contain any reference to extensive travel requirements but the actual on-the-job working conditions described by the employee is to the contrary there can be no successful application of Article 36.04, by Ms. Inch's description of its workings. The employee can always look to have the job description itself changed to properly reflect the work being done. In short, the Appeal Board should not be looking outside ensuring equal pay for equal value on the basis of the written job description itself, not considering any self-description of work somehow taking the person outside its parameters. The Appeal Board, by her understanding, should accept the written job description as accurately describing the job to be assessed by it and on that basis alone place the incumbent properly within the points ranking system pertaining to that job description and the work being done within that job description. Were a supervisor or manager to be assigning work at some point outside the written job description parameters, the Employer takes that to be a different issue able to be rectified within the normal grievance process but not by Article 36. It should be the job description, applicable to that individual and perhaps many

others on a benchmarking basis, which is being subjected to the appeal process individually triggered, and not the appellant's performance in the job. She testified that one's performance level is not a points' evaluation issue.

Certainly, Ms. Inch acknowledged, jobs evolve, which she said can ultimately be addressed by a rewrite of the job position at some point at the appropriate management level, but that situation should not be the concern of the Article 36.04 Job Evaluation Appeal Board process and its focus on whether the job description itself has been properly points assessed. She acknowledged that rewriting a job description could take some time, the new description having to be written at the appropriate management level, submitted and Hay Method evaluated, but that state of affairs should not affect the functioning of the Appeal Board in dealing with whether the points have been properly assessed relative to the written job description as it currently stands. She testified that employees working outside their written job description, or having greater capacity, or more responsibilities not disclosed by the job description, should not be an issue for the Appeal Panel. It should always be about the job as described in the written job description and not about an individual's performance in their assigned duties.

By Ms. Inch's description it is noteworthy where an Appeal Board decision results in altering a points' evaluation for a written position, it becomes a benchmark for that position, applicable to others, which will stand until reconsidered as the root document. Presumably this would be because the Employer does not accept the Appeal Board decision ramifications to be with respect to only the incumbent bringing the appeal. Certainly, the job evaluation goal under the Hay Method is to rank all job descriptions in a consistent manner based on the relative degree to which the jobs impact the GNWT as competently performed. In citing her issued 2015 memorandum, she reiterated that the Hay Method focuses on the nature and requirements of the job itself, meaning by reference to the written job description, not on the skills, educational background, personal characteristics or the current salary of the person holding the job. Doing extra work, she said, is not a matter of job evaluation under the Hay Method and hence the appeal process is limited to the four areas of know-how, problem-solving, accountability and working conditions to be taken as the relevant components of the written job description, and not including any work performed outside the written job description. As the Employer views it, the Appeal Board role is to compare one job with another in establishing the ranking by reference to the written job description, otherwise there could be no benchmarks. As she put it: one cannot

evaluate a job that is not a job set out in the written job description. If the duties being worked are not recorded accurately so as to come within the job description parameters, so be it. By her understanding, deficiencies in the written job description require a "different path to be taken" which was said not to be an Appeal Board responsibility under Article 36.04.

In cross-examination, Ms. Inch was unshakable in her view, while pointing out that by her information less than 2% of job descriptions involve an Article 36.04 appeal, probably no more than about 10 incumbents in a given year across the GNWT workforce. She was asked for her view on why it would be that Article 36.04(1)(a) and Article 24.11(1) were amended and how are they to be applied. She answered that it was all about establishing a retroactivity date for applying the Appeal Board unanimous decision concerning the proper Hay Method points' assessment evaluation, having possible financial ramifications, and not about "adding invisible things" not contained in the job description. It was applicable to provide a retroactive answer back to that point in time when documentation showed that the issue was raised concerning the current evaluation dispute, for example writing to one's supervisor indicating disagreement with the evaluation. It should not be viewed as ever taking the examination outside the written job description. It was not meant to deal with any information not firmly rooted in the written job description itself. As she put it: the Appeal Board's assessment in considering whether the appealed Hay Method evaluation is supported has to make two assumptions, firstly that the written job description's duties and responsibilities are being worked the same by the incumbent as with anyone else in an identical job description, and secondly that the written job description accurately describes what the incumbent does. In short, by her assessment, there is little room for any individualizing of the factual investigation towards examining the full scope of the duties claimed to be performed.

Shaleen Woodward, currently the Deputy Secretary Indigenous and Intergovernmental Affairs has a lengthy working history at GNWT in various senior management roles, including for many years working in Human Resources which included having negotiating responsibilities in the 2009 round of collective bargaining. She identified the GNWT internal memoranda respecting the proposed Union changes during the 2009 round of collective bargaining, with the Employer's typewritten notation dated April 9, 2009 relative to Article 24.11 stating that:

> *This is based on the UNW proposal. We are proposing changes to art. 36.04 to require documentation of discussions between the employee and the Employer to be provided at the time a job evaluation appeal is filed.*

And with respect to Article 36.04 (1)(a) that:

This proposal requires an employee filing a job evaluation appeal to provide previous documentation concerning the employee's evaluation of their job description with the Employer.

The Employer's April 21, 2009 typewritten negotiating notes indicate in dealing with is the amended language of Article 24.11(1)(c):

The UNW has agreed to this language.

This language requires changes in art. 36.04 to require documentation of discussions between an employee and the Employer to be provided at the time it job evaluation appeal is filed.

And with respect to Article 36.04(1)(a):

This amendment is necessary as part of the agreed to changes in art. 24.11(1)(c).

And with respect to the April 22 discussions dealing with Article 36.04 (1)(a):

An appeal may be filed without any documentation showing previous discussions concerning re-evaluation. If there is no documentation showing previous discussions filed with the appeal then under art. 24.11(1)(c) there can be no increased retroactivity.

By Ms. Woodward's recollection of the 2009 round of collective bargaining, much of the Parties' joint discussion centred on the application of retroactivity and what would happen where there is no documentation respecting the timing of the new or changed duties, but ultimately that was not the test for a points' re-evaluation. It was understood by the Employer negotiators to be whether the position had been evaluated appropriately on the basis of the existing job description itself. It was a separate prospect for one to arguably require a new job description.

Ms. Woodward also referenced her internal handwritten notes which, as this arbitrator reads through them, are taken to contain no remarks indicating the respective negotiators were necessarily agreed on all the interpretation issues which might arise as a result of the amended language. By example, her notes from March 5, 2009, record the Union's stated view that the suggested change to Article 24.11(1)(c) reflected the current practice about applying an earlier date to certain identified duties which

are different but have not been assessed. Her bargaining notes from April 23, 2009 disclose the Union negotiator's having indicated that substantially performing in the new or changed duties should not be the test for moving the appeal forward, generating no recorded response. In any event, whatever the nuances of their separate interpretations they ultimately agreed on the language changes to Article 36.04(1)(a) and Article 24.11(1)(c) as currently existing.

By Ms. Woodward's understanding, overall, both prior to and subsequent to the 2009 contract negotiations, the focus of the Appeal Board process was jointly known by the Parties to be a matter of debating and assessing an incumbent's position points' evaluation by reference to the job description documentation and the numeric value of the duties described therein under the Hay Method. The Article 36.04(1)(a) amendment, by her description, was only about applying the assessable value from a point in time after establishing, possibly with documentary proof, when the person was performing in a new or changed duties of a higher position by reference to the scope of duties set out in the published job description, being only a retroactivity issue. It was not about rewriting the job description in any fashion or giving any weight to a person possibly working outside the job description. Obviously thereafter it could take some appreciable time to do a formal re-evaluation and rewrite the position were that to be the situation presented. It could be a situation where there was an "evolution in the job" which would eventually require the Employer's rewriting the job description to better describe its substantive aspects, not seen to be an Article 36.04 issue. Its language, she said, was meant to be coordinated with the concomitant change to Article 24.11(1)(c) concerning retroactivity but otherwise was not intended to change the Appeal Board's approach. She pointed out that there was no indication anywhere in her own negotiating notes suggesting that the Employer presented any different view. She also acknowledged that at no point was Article 34 discussed in connection with the Parties changing the language of Article 24.11(c) and Article 36.04(1)(a), or the need for objectively assessed accuracy of the job description. The Appeal Board had no authority to rewriter anyone's job description.

By Ms. Woodward's description, fashioning any new job description would be through a different process. Putting it in the simplest terms, she said, were one's job description to require only herding animals but not any feeding duties which are nevertheless being done, the option for the employee is not to feed them or alternatively look for a re-evaluated job description under Article 34. She cited its requirement that employees are entitled to a complete and current statement of their duties in his or her

position. Query whether the job description included feeding animals as a minor part of herding, but turned out to be a major requirement of the job in terms of time, effort, and other identifiable aspects. By her description were feeding animals to be included in the job description then the evaluation could possibly be appealed on the basis of know-how or working conditions connected to the work not being adequately reflected in the Hay Method evaluation. The Appeal Board's role, as she understands it, is to evaluate the job description as written, not to include non-described duties which might be worked as an aspect of one's individual performance.

In cross-examination Ms. Woodward was asked for her views on Article 24 not expressly referencing Article 36, nor Article 36 expressly referencing either Article 34 or Article 24. Further, Article 36.04 makes no express mention of limiting the Appeal Panel's considerations to the written job description in allowing a person to provide documentation demonstrating one's substantially performing new or changed duties of a higher position. It can also be observed that Article 24.11(1)(c) references a position being re-evaluated as a result of a change in duties and responsibilities, or possibly no substantial changes in duties and responsibilities, but either way possibly resulting in a higher pay range to be retroactively applied. There is again no express mention of written job descriptions. Ms. Woodward responded that nevertheless Article 36.04 is about the appeal process which focuses on assessing one's written job description by reference to the Hay Method and is not about analysing duties possibly being performed outside the job description. By her description, she thought that fundamental approach was made quite clear during the 2009 collective bargaining and she believes that the Union understood the connection with Article 24. She agreed that Article 34 was not mentioned during these negotiations over the rewritten language of Article 24.11 and Article 36.04(1)(a), with the negotiating notes not showing any discussion concerning accuracy of job descriptions or needing to rewrite job descriptions.

Prior to my summarizing the arguments from counsel, I will mention that the only arbitration award between these Parties tabled at hearing for my consideration, *GNWT and UNW*, (unreported April 15, 2013, Ponak) involved the Union having *grieved* the new job evaluation of the Youth Corrections Officer position in the North Slave Correctional Centre following its being initiated at the departmental level as a matter of actioning a periodic review and update of the job. The re-evaluation had been carried out by a job analyst using the Hay Method, said to be based on her review of the job description and comparison of jobs within the department and across the Public Service, with points being assigned on

that basis, and then the successful recommendation made it to the Deputy Minister. Obviously, it was not an Article 36.04 job evaluation appeal case. There had been no actioning of its provisions by an affected incumbent. The Union filed the grievance on the basis that there had been no substantial change in the position's job description and the Parties were accordingly bound by the results of the previous evaluation unless the incumbent left the job or there had been a substantial change. The Employer held to the view that there was no requirement for a substantial change in the job description before a new job evaluation could be done, but only a change in the job description was required. Further, the Employer asserted that "if the Union wished to challenge the results of the new job evaluation, its recourse lay in the appeal mechanism under the collective agreement rather than through the grievance procedure", which is to say having to utilize Article 36.04.

In arbitrator Ponak's describing the job re-evaluation process as it had unfolded, including the analyst's recommendation and acceptance by the Deputy Minister, he reviewed the evidence of the Manager of Job Evaluation for the GNWT who explained the Employer's view that once the employee was working in the updated evaluated position, whether the applicable pay range was increased or red circled, his or her avenue for possible relief was through the Article 36.04 evaluation appeal process. As Arbitrator Ponak put it: "she emphasized in her testimony that only the job evaluation itself is subject to appeal, not the job description. The first step of the appeal was the Job Evaluation Appeal Board" which could lead to a hearing and possibly a unanimous decision by the Appeal Board covering the disposal of the appeal which would be binding on all parties. In his determining that the challenges to the actual results of a job evaluation, i.e., the total points and salary ranges under the Hay Method must be addressed through the Article 36.04 appeal process, and having reviewed the mechanism coming into play where an individual was not satisfied with his or her job evaluation, the arbitrator concluded that the Parties intended that Article 36.04 was to be the exclusive mechanism for challenges to the results of a job evaluation. The evaluation results cannot be grieved but must be referred to the process established through Articles 36.03, 36.04 and 36.05, excepting possible procedural violations of the job evaluation appeal process which could be subject to grievance and arbitration. Having reached that conclusion through a comprehensive review of the Article 36 requirements (no reference made to Article 24 or Article 34), the arbitrator commencing at p. 14 went on to comment as follows:

This conclusion is rooted in the language and structure of article 36. Article 36.01, addressing the introduction of any new job evaluation system, expressly calls for arbitration to resolve disputes over the introduction of a new system. By contrast there is no reference to arbitration in articles 36.03, 36.04, or 36.05 with respect to disputes about the results of a job evaluation. The express reference to arbitration in one part of article 36 and the absence of any reference elsewhere suggests that the parties did not intend disputes over the results of a job evaluation to be referred to arbitration. Indeed, article 36.04(1)(a) uses mandatory language with respect to job evaluation appeals—they must be filed with the Deputy Head who must refer the appeal to the Appeal Board. The grievance procedure is not mentioned and it must be presumed that the lack of mention is deliberate.

The reliance on a neutral chair for the Review Board, chosen by mutual agreement of the parties or, failing agreement by a territorial court, is further evidence that the parties intended the article 36.04 appeal procedures to be a substitute for the grievance process. The neutrality and acceptability of the key decision maker is a hallmark of sound adjudicative processes and mirrors the arbitration process. The requirement that the members of both job evaluation appeal tribunals be versed in the Hay system ensures a level of expertise that reinforces the parties' intention that the article 36 appeal process be a specialized substitute for the grievance procedure. The binding nature of the decision of appeal boards, set out in articles 36.04(1)(e) and 36.04(2)(f), is another indication that the parties intended finality; article 36 procedure was not designed as merely a stepping stone on the way to arbitration or as a buffet from which employees can pick and choose.

Finally, I am cognizant of the general policy and judicial trend to avoid unnecessary duplication of adjudicative processes. It would make no labour relations sense to set out a detailed appeal process with specialized expertise, chaired by a neutral, and binding on the parties, if the grievance and arbitration provisions could stand as a parallel process. The article 36.04 appeal process must be seen as the exclusive forum established by the parties for employee appeals of job evaluation results with which they disagree.

My conclusion that the parties intended the article 36.04 Appeal Board and Review Board to be the exclusive mechanism for challenges to the results of a job evaluation does not mean that all aspects of job evaluation appeals are immune from grievances and arbitration. Clearly certain alleged procedural violations of article 36.03, 36.04, and 36.05 could be the subject of a grievance culminating in arbitration. Examples might include a refusal by the Employer to give an employee a copy of his or her point rating as required under article 36.03(2); the rejection of a unanimous decision by the Job Evaluation Appeal Board under article 36.04(1)(e); the refusal of one party to appoint a nominee to the Job Evaluation Review Board (article 36.04(2)(b)); or, the refusal of an Appeal Board or a Review Board to allow an appellant to be heard and explain the reason

> for his or her appeal (articles 36.04(1)(c) and 36.04(2)(d)). These examples are not intended to be exhaustive but are illustrative of the kind of procedural disputes that could conceivably arise and be open to a grievance and ultimately arbitration.

Arbitrator Ponak went on to remark at page 17 concerning the Union's view that where there is a minor change in the job description, it should not produce a different evaluation outcome:

> This is a question of results (or point totals) not a procedural question. Job descriptions are the point of departure for a job evaluation and the analysis of job descriptions along with job duties are a central element in performing a job evaluation. Assessing whether there has been sufficient changes in a job description and job duties to warrant a different Hay system point total is precisely the type of issue that lies at the heart of the Appeal Board and Review Board's mandate".
>
> .....

In argument on behalf of the Union, Mr. Penner submitted that it was seeking an interpretation of Article 36.04(1) on the plain wording of the language which under paragraph (a) allows the incumbent appellant to provide any written documentation, or not choose to do so, in order to demonstrate that he or she (i) "was substantially performing new or changed duties of a higher position" and (ii) "raised these concerns with the Employer" followed by the appeal having to be referred to the Job Evaluation Appeal Board for its decision. Under paragraph(b) if the Appeal Board members "must be trained on the use of the Job Evaluation System". Under paragraph (c), the Appeal Board once receiving the reference "shall give the employee and/or the employee's representative an opportunity to be heard and to explain the reason(s) for the appeal" with its mandate under paragraph (d), by unanimous decision, being to "either determine that the employee's evaluation is proper or determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position", with the unanimous decision of the Board under paragraph (e) to be binding on the Parties "until such time as that employee has been promoted, transferred, or the job description is changed by the Employer and has been reevaluated". There is no indication that the Appeal Board's mandate is confined by the written job description. Indeed, it contemplates that the job description might have to be changed following the Appeal Board's issuance of its binding unanimous decision. The process contemplated, Mr. Penner submitted, includes an individualized examination of the work being performed, in addition to the written job description, which is what Arbitrator Ponak was suggesting an *obiter* fashion, otherwise why

contemplate the possibility of the Employer ultimately rewriting the job description as the potential end result under Article 36.04 (e). He submitted that there is nothing about this language which on a plain reading would suggest anything other than the appeal process is to be carried out on in line with the Appeal Board needing to consider the incumbent's actual work related duties which are being performed in the position.

Counsel submitted that essentially the Employer is asking the arbitrator to inject language into Article 36.04 that the information provided by an incumbent appellant should be limited to a consideration of the retroactivity possibility under Article 24.11 and then only by reference to the written description. But the language does not support that interpretation. It can also be observed that Article 36.04 does not anywhere refer to Article 24.11 or expressly require that the information received by the Appeal Board is limited only to the retroactivity issue, an issue over which the Appeal Board has no control as its job is to determine the proper evaluation.

Mr. Penner submitted that language can be interpreted on its clear and ordinary meaning, there being no mutual acceptance concerning the 2009 round of collective bargaining concerning the new language of Article 36.04(1), and Article 24.11(1)(c), which should amount to the Union ever agreeing that any documentation which might be provided, or any verbal explanation provided to the Appeal Board concerning a person substantially performing new or changed duties of a higher position, i.e., the individualistic approach, was somehow limited only to the retroactivity issue. Likewise the pre-existing Memorandum of Agreement in requiring application of the Hay Method Evaluation guide charts, used in conjunction with benchmark positions to provide for gender-neutral individual job evaluations, presents no contrary view. Its lead paragraph concludes with:

> ... The parties also agree that the job evaluation appeal process under Art. 36 of the Collective Agreement has been devised to provide a joint and independent process for ensuring that each individual job evaluation result is gender-neutral.

It goes on to contemplate grouping the same or similar or selected samples of positions to be evaluated on appeal. There is no grouping suggested as being available here to the incumbent individual. There is no provision expressly requiring the Appeal Board to limit its investigation and assessment in the manner suggested by the Employer witnesses, whatever the future ramifications are for other positions concerning which the Appeal Board has no authority to even rewrite a formal job description. Notably, under paragraph under Article 36.04(1)(e), following the Appeal Board's unanimous decision it is left to

the Employer to decide whether the job description itself should be changed and re-evaluated on that basis

Were past practice to be a consideration, Mr. Penner submitted, the evidence of Mr. Parsons was significant inasmuch as it was his uncontradicted testimony as an Appeal Board member for some years prior to the language change brought about by the 2009 round of collective bargaining that the Hay Method points' review focussed on the individual incumbent who had triggered the appeal seeking a different score on the basis of the actual assigned duties he or she was performing in the position. It was an individualized examination which the Appeal Board pursued. At this point, counsel submitted, was one to accept the Employer's view that information provided by the individual covers only the retroactivity issue and not the points to be provided on an individual assessment basis, it would mean providing no real access to an evaluation appeal mechanism based on what anyone actually does in the job. The Union asserts that this approach cannot be what is meant by the amended language of Article 36.04(1)(a), or previously where documentary information for many years was allowed and considered on the issue of whether the incumbent was performing new or changed duties, a long-standing practice.

In dealing with the Ponak award, Mr. Penner said it was significant that the arbitrator recognized that the only appeal process for an individual employee thought to have been improperly assessed in his or her job is by reference to Article 36.04 where the incumbent's entreaty under Article 36.03 to discuss the evaluation had not proven to be successful. There is no suggestion in the Ponak award, he submitted, of there being any alternative method for an employee seeking to address the issue of possible disparity between the work being performed and the job description which published document might apply to any number of incumbent coworkers. Further there should be no suggestion of any determinative interaction between Article 34 and Article 36.04 to be taken from that award. Article 34 only allows that the employee when first engaged or reassigned to another position will be provided with an accurate statement of duties of the position, and is entitled to a complete and current statement of duties and of the position in addition to the evaluation level and point rating. The question remaining to be answered under an Article 36.04 appeal is whether the duties being actually performed by an individual employee have been properly valued. As arbitrator Ponak pointed out, it may lead to an article 36.04 appeal. There is no access to Article 34 in such a situation. The documentary and other information able to be provided, counsel submitted, contemplate a substantial analysis of the duties being performed, together with the

job description itself, otherwise why ask for this information were it only a matter of relying on the written job description. Where would the remedy be under the Ponak rationale about the exclusivity of the Article 36.04 evaluation appeal process were all the Employer had to do was acknowledge that the person was not performing within their published job description to escape the appeal process. If it was only about retroactivity it would always be easy enough to establish when a person first started working in a particular job covered by a position description. Mr. Penner submitted that the exercise requires determining both whether and when the person started working in certain duties which may or may not fairly require a different gender-neutral points' evaluation under the Hay Method system for the work being done.

Bluntly put, the Union in no way accepts that the Appeal Board process excludes a consideration of the scope of work performed by the incumbent in the position, to be determined on a fact-based investigation, certainly not by any reference to a supposed interaction between Article 24.11 and Article 36.04 or limited to an evaluated written job description which should but might not accurately describe all the substantive factual components of the job being worked. In the Union acknowledging the significance of benchmarking job descriptions, it should not prevent properly crediting a person with work he or she is performing in their job by reference to the several categories appropriate to such an assessment, namely the four component areas of know-how, problem-solving, accountability and working conditions. Article 360.4 makes no reference to any benchmarking property.

....

Ms. Kay on behalf of the Employer submitted that it stands by its view of the proper interpretation of Article 36.04(1) as explained during the testimony of its management witnesses Inch and Woodward, being that the Job Evaluation Appeal Board's re-evaluation mandate concerns its examination centering on the written job description and not any incumbent's claim that he or she is working outside its boundaries and needs to be compensated on that basis. In recognizing this approach, she said that one should not lose sight of the significance of Article 34, whether or not that provision was raised during negotiations, which contractually requires an accurate job description. Presumably, where the range of a particular incumbent's duties is not properly reflected in the job description, that shortfall can be grieved, followed by a proper job description being determined, issued and evaluated at that point in line with the personally described duties and responsibilities assessed under the Hay Method system.

As counsel put it: Article 34 comes first, and thereafter under Article 36.04 it is a matter of the appeal process concentrating on the job description itself being the "root document" for the appeal. It should be understood that the work involved in the described duties are those contained in the job description and the job description itself should not be opened up as part of the appeal process under Article 36.04. It would not be appropriate for the Appeal Panel in its review to "read in" added duties not contemplated as being worked by reference to that document, with job descriptions providing the basis for benchmarking positions across the GNWT employment system.

Ms. Kay submitted that the reference to documentation contained in Article 36.04(1)(a) is tied to the retroactivity possibility applicable under Article 24.11, both amendments being agreed during the 2009 round of collective bargaining. It is a matter by reference to that language of the position incumbent being given the opportunity to demonstrate when the position evaluation issue was first raised with his supervisor or manager, as explained by management witnesses Inch and Woodward, and where there is a need to identify the trigger date for any change in a job description coming into effect. This language should not be taken as adding to the Appeal Board's mandate, being to examine the incumbent's claim as circumscribed, i.e., restricted, confined and restrained, by the existing job description document. Counsel submitted that the Employer's bargaining notes reflect this approach.

Ms. Kay submitted that the Employer holds to the view that the Ponak award is helpful to one understanding the obligations set out in Article 36.04, presumably including the portion of the award at page 14 where he concludes that the Article 36 provisions provide a complete system for dealing with the appeal process where the person believes that his or her position has been improperly evaluated. The employee displeased with the results of his or her job evaluation must file an appeal as opposed to having access to the grievance procedure. What the Employer takes from the award is that Article 36.04 in setting out the exclusive forum for the job evaluation appeal through the position incumbent accessing another Hay Method points' assessment, does not provide for the Appeal Board acting beyond its mandate to apply the job description as written and assign a Hay Method evaluation based on its known methodology, retroactivity aside as a possibility. Were an incumbent to see a change in the job so that duties not contemplated under the job description are being performed, the Employer submits, he or she would have to file a grievance under Article 34 which would create the opportunity to have an accurate job description created. Ms. Kay submitted that the Appeal Board is authorized by the collective

agreement to work only within the confines of the published job description and provide its answer under Article 36.04(1)(d) "that the employee's evaluation is proper or determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position", meaning the job described position and not the duties which might actually be performed unless covered by the job description. Based on that provision, and by reference to the necessary workings of the Hay Method evaluation system which contemplates points being awarded on the basis of the written job description and creating benchmarks across the system, Counsel submitted, there is no room to assess anyone's individual performance in the job. The bargaining notes should not be taken as reflecting any different view.

Conclusion:

I will start by observing that there is no doubt about the process described in Articles 36.03 and 36.04 having been established to first provide a job evaluation discussion avenue to position incumbents followed by the formal appeal mechanism disputing an initial, or subsequent, gender-neutral evaluation under the Hay Method. The appeal mechanism under Article 36.04 is an individual incumbent triggered process, although the MOA contemplates there shall be grouping of appeals of the "positions under appeal are the same or similar". There may or may not be multiple appeals available to consider at the same time. The issue under discussion here is not one of grouping appeals whenever that might occur.

The Parties are taken to agree on certain fundamental aspects of the incumbent position holder actioning the Article 36.04 provisions which, in addition to the gender-neutral quality of the scoring process needing to be applied under the Hay Method, provides a mechanism not involving the Appeal Panel assessing an incumbent's qualifications, or performance expectations and fulfilment thereof, or the ability to do the job as laid out for him or her. Rather, as with the initial job evaluation itself, it is still a matter of assessing the know-how needed for acceptable job performance; the problem solving requirements of the job; the accountability dimensions including the incumbent's freedom to act and decision-making impact; the working conditions such as physical effort; and the possible environmental demands of the job. Obviously, given the benchmarking situation, there can be numerous incumbents working under the same or very similar job descriptions. As detailed by Ms. Inch in her testimony, there is no doubt that the Hay Method of job evaluation sets out to review jobs within an organization and

gender-neutral rank them according to several criteria, The Hay Plan approach is not disputed, nor the Employer's reasonable affinity for settling on benchmark positions across its system discernible from the published job descriptions. It does not mean that individual incumbents should be prevented from raising factual content issues covering their own working situation on their proceeding with a job evaluation appeal. The Parties' difference here over interpretation centres on the role to be played by the written job description in the evaluation appeal process triggered by an incumbent, no grouping "issue" revealed as may be available in multiple appeals. The debate here is over exactly how the factual information should be gleaned relative to an individual incumbent, i.e., whether the Appeal Board can go beyond considering the written job description itself in evaluating the worth of the work being done.

One interpretation problem presented for the Employer on the wording the Parties have chosen to express their mutual intention is that the renegotiated 2009 Article 36.04(1)(a) language expressly refers to providing documentation demonstrating that the employee "(i) was substantially performing new or changed duties of a higher position, and (ii) raised these concerns with the Employer," although the incumbent can appeal the job evaluation even without submitting such written documentation. This language on its face does not suggest that the Appeal Board investigation should necessarily be limited to the written job description attaching to the position. Paragraph (c) provides the opportunity for the employee and/or employee representative to be heard by the Appeal Board to explain the reasons for the appeal, notably followed by paragraph (d) where it rests with the Appeal Board to render a unanimous decision, if possible, in determining that "the employee's evaluation is proper or determine that the employee has been improperly evaluated in his/her position and determine the proper evaluation for the position". These provisions do not expressly reference the description document itself as the sole determinant in the Appeal Board's application of the Hay Method, as opposed to considering the work being performed, nor that the investigation should be confined to known parameters of the written job description.

The issue which arises can be distilled down to whether this language of Article 36.04(1) in its entirety supports the Appeal Board observing and considering the obvious reality in some circumstances presented to it that jobs having the same or similar published descriptions may well contain some substantively different duties on a case-by-case factual examination of the work being performed, or should that kind of investigation be excluded. According to Mr. Parsons an open approach was taken

historically to review and evaluate the work being done. It would raise the type of fact-based differences needing to be resolved on an individual case basis which would directly reflect on the four stated assessable areas which the Employer analysts would have needed to consider under the Hay Method of scoring – know-how, problem-solving, accountability, and working conditions, had such facts both existed and were known at the time of the initial evaluation relative to the job description. At the same time, one might observe, it is not an unknown occurrence that an incumbent's regularly instructed duties under a published job description could change over time, even transition into something quite different in one or more fundamental ways not tied to his or her individual performance, skills or work ethic, but rather centering on the evolving nature and requirements of the job itself. In such a situation, I suspect, it is not sufficient for the Employer to solely rely on the Article 34 in its requiring that an employee be provided with a complete and current statement of duties and responsibilities of his/her position, thereby presumably giving rise to the possibility of a grievance being filed. The significance of the Article 36.04 evaluation appeal process as an exclusive avenue for employee redress has been remarked upon by Arbitrator Ponak in his 2013 award between these same parties and is taken to have some instructive value favouring the Union's position. He does not see there to be an Article 34 grievance alternative to the Article 36 process available to the individual incumbent, unless there has been a procedural misstep in its application by the Employer.

It is observed that Article 36.04 contains no express requirement for the Appeal Board to ignore evaluating the scope of an incumbent's regularly instructed duties, a factual assessment, where they may not be adequately described in the job description. Its critical role, realistically, is to determine whether the employee was properly evaluated in his/her position, i.e., properly credited for the work being done, and where that is shown not to be the case, do to its own Hay Method evaluation. Its concern at the point of intervention is not with benchmarking the work for the benefit of other positions. An incumbent's individual appeal process is a different issue than the employee or Union seeking to change the written job description itself, which might apply to numerous employees on a benchmarking basis, or somehow wanting to have it rewritten by the Appeal Board which this language does not permit. That eventual possibility falls within the Employer's authority, but noting that under paragraph (e) a unanimous decision of the Appeal Board is binding "until such time as the employee has been promoted, transferred or the job description is changed by the Employer and has been re-evaluated".

Interestingly, the language of 36.04, concerning individually filed job evaluation appeals, does not expressly require that all individual appellants with the same job description must be taken as doing the same work and need to be evaluated identically, or that benchmarking in such a situation is required in determining the job facts pertaining to an individual incumbent. It is no stretch to acknowledge a reality of working life that individuals having essentially the same job description may well have some substantial differences in their regularly assigned duties which in some cases can only be discerned through a case-by-case assessment process and, one would expect, could affect the Hay Method scoring on an individual case basis where a person is shown to be matched to the wrong group, or working at the wrong level within the group, or that the system has somehow allocated wrong factors to be considered relative to that person, keeping in mind the duties actually being performed by the incumbent as determined through a factual analysis.

I accept that the express Article 36.04 language cannot be ignored, nor the impact of the Ponak award concerning the significance of Article 36.03 discussions and Article 36.04 appeals being the exclusive path for resolving individually triggered disputes over the results of a job evaluation. This contractual description of the process is what I have to accept on the wording of Article 36.04, governs the job evaluation appeal process and envisages an assessment of the job being worked on an individual case basis at least where grouping appeals presents no issue.

The description of past practice provided in testimony tells us that there was a functioning appeal process ongoing within that same frame of reference well prior to the 2009 contract negotiations further codifying it through the current wording of Article 36.04(1)(a). While this matter need not be decided on the basis of past practice, it is certainly consistent with the Union's understanding of the language. I do not find that the Employer's view of the contract negotiations changes the process which had unfolded and been followed over several years by the Appeal Board, Mr. Parle and Mr. Parsons being the only two witnesses with Appeal Board member experience who testified. The bargaining notes presented in testimony do not suggest that the Parties were necessarily agreed on the Employer's current view of the appeal process that Article 36.04(1)(a) was only referring to a retroactive application of any written job position confined change to be determined by the Appeal Board in conjunction with Article 24.11(1)(c), and did not have any other impact on the evaluation process to be followed, or somehow changed the longstanding process as managed at the Appeal Board level.

My reading of these provisions does not support the Employer's proposition that the assessment should exclude pertinent fact-based information concerning the job being worked on an individual case basis which may or may not show substantial performance of new or changed duties of a higher position and what that could mean to providing a new points' evaluation of the incumbent's job. One might observe that were it not for the retroactivity specifically provided by Article 24.11(1)(c) an argument could be made that the Appeal Board should consider only the employee's duties at the time the review was held, although apparently that approach would not be in line with past practice. It is always best to detail the retroactivity aspect which I accept is how Article 24.11(1)(c) applies. It does not address the factual range of the review itself. The 2009 negotiated language is a helpful addition to ensure that documentation showing one's performance in new or change duties from what one was expected to be performing under the existing job description should be considered, and the possibility of having retroactivity on that basis is significant.

Certainly, the published job description is a foundational document in any organization, setting out the assigned duties and responsibilities of the job, the organizational placement of a person in a described position, giving rise to an assigned title and pay grade. It will not always set out every conceivable duty that an employee might ultimately be expected to perform during the workday, although it should include the recurring major duties and responsibilities, nor always accurately describe time and work divisions, required of the employee. But were the Appeal Board process not to concern itself with the duties being performed by an individual appellant incumbent, I suspect, the evaluation appeals process could prove unworkable, it coming down at that point to a need to find a representative candidate for the published job description as opposed to individualizing the investigation to the person doing the work and inviting a fact-driven examination into the duties actually being assigned. I do not see that the Parties for purposes of an incumbent triggered evaluation appeal process are talking about "position" in the sense of including all identically described job descriptions on a required benchmarking basis, despite the Employer's need to have benchmarks, but rather the appeal process contemplates a job evaluation to be done on an individualized case basis as affecting the employee incumbent launching the appeal. Perhaps a different approach is required where there are grouping of appeals permissible under the MOA, but I do not see that to be the issue here. That possibility is not required by Article 36.04 which plainly references an employee believing that his or her position has been improperly evaluated

and refers to employee in the singular throughout its language.

I would add that to my way of thinking, there would be no adequate fairness in an evaluation appeal process which allows two individuals holding identical positions by reference to the written job position, one of whom (hypothetically speaking) spends 75% of his or her time travelling and working in remote conditions while the other spends only 25 % of his or her time working in such an environment, identically assessed under the Hay Method points' criteria by reference to only a published job description which understates the travel requirements, thus the significance of Article 36.04. While it may be convenient for the Employer to have each individual job coming within a broadly scoped job description, including for benchmark purposes, which may involve numerous incumbents being assessed exactly the same for Hay Method conclusions, that approach on an individual appeal avoids the reality of incumbents working in widely varying conditions perhaps with quite different physical effort, environmental conditions, sensory demands or even mental demands, all being factors in considering one's working conditions, but not always adequately described in the formal position document. Thus the significance to the individual employee of the availability to an individual gender-neutral Hay Method assessment on appeal. Otherwise, why bother to have any individual investigation able to be launched under Article 36.04 by an incumbent concerned with his or her own factual situation and, one might ask, what would be the purpose for the next appellant in line working under the same published job description who has quite different factual description to present. In my view it is not a reasonable answer for the Employer to assert the person was working outside their job description.

It may be that some published job descriptions in every substantive way describe the functions associated with the job being worked, meaning that were an incumbent to invoke the job evaluation appeal process, it would be a matter of the Appeal Board deciding whether the incumbent was properly Hay Method assessed initially on the basis of the written job description itself and not ultimately needing to assess the situations outside that document following review of the information provided. However plainly that does not occur in all cases of job evaluation appeals with the real significance of the Article 36.04 language being its application in situations where the facts of the matter show that an individual was working substantially changed duties from those set out in the job description, needing to be considered by the Appeal Board on that basis. There has to be an employee avenue for that kind of investigation and it is not in grieving non-compliance with Article 34.

Notably, the Ponak award accepts there to be an employee's individual channel for redress where the incumbent believes his or her position has been improperly evaluated is by reference to Article 36. As he succinctly put it at p. 14: "I conclude that the intention of the parties was to remove challenges to the results of a particular job evaluation from the grievance procedure and have such challenges exclusively governed by the procedures in Article 36.03, 36.04 36.05..." He went on to remark at p. 17 in dealing with the Article 36 process: "Job descriptions are the point of departure for a job evaluation and the analysis of job descriptions along with job duties are a central element in performing a job evaluation. Assessing whether there has been sufficient changes in a job description and job duties to warrant a different pay system point total is precisely the type of issue that lies at the heart of the Appeal Board and Review Board's mandate.". I agree with this statement, in concluding that the appeal process has to be particularized to the incumbent's individual working situation, as long as the investigation falls within the four corners of the Hay Method evaluation guideline, namely know-how whether cognitive, managerial or in the nature of human relations skills; problem-solving whether in the dimensions of the thinking environment or situational challenge; accountability whether freedom to act, impact on end results or magnitude; and working conditions consisting of an assessment of physical effort, environmental conditions, sensory demands and mental stress. These are the hallmarks of the Hay Method of job evaluations as applied to GNWT employees. The Employer is concerned about its benchmarking needs. The simple answer there, I suppose, is not to use an individual case situation, determined by the Appeal Board, for benchmarking purposes. We have in evidence that job evaluation appeals are in any event a relatively rare occurrence. Again, there is no issue presented here of grouping grievances which are the same or similar.

In all, this matter does not need to be decided on the basis of past practice, which nevertheless favours the Union's understanding of the Article 36.04 process, nor by reference to the evidence on negotiating history which does not demonstrate any mutual understanding taking the contract interpretation away from the language as written, but rather on the basis of my considering the entire context of Article 36.04. Its meaning can be taken from the clear wording the parties have used to express their mutual intention and is not altered by the existence of Article 24.11(c) or Article 34. In my view the Article 36.04 appeal process is not about formally rewriting anyone's job description which is not a consideration under this language. It is about accepting that there is an appeal process in place which

ensures that one's work will be evaluated appropriately under the Hay Method and hence the person paid on a gender-neutral basis for the work being done by reference both to the assigned duties and the job description itself. Any ultimate rewriting of the job description is left of the Employer. To be sure, it is not about ignoring the existing written job description. But, one might observe, a broadly scoped job description is not always enough to ensure fair evaluation of an individual's assigned duties in the position on the basis of the four accepted Hay Method components as applied to the GNWT workforce.

In the result, this policy grievance succeeds in that Article 36.04 filed job evaluation appeals by individual incumbents and referred to the Job Evaluation Appeal Board by the Deputy Head should be considered on the merits of the fact driven case presented to the Appeal Board. It is mandated through this contract language to do its own assessment on whether the individual incumbent's evaluation is proper or has the person been improperly evaluated in his or her position, and determine the proper Hay Method evaluation for the position, meaning that person's job as worked, not the position writ large, although certainly doing comparisons with similarly or identically described position is appropriate under the Hay Method. The point of the language is to bring the evaluation home to the employee on an individual case basis, possible appeal grouping issues aside.

This award is in the nature of providing declaratory relief at this point and I remain seized in the event that any clarification or further directions are required in order to complete the award.

DATED at Calgary, Alberta, this 29th day of November, 2018.

Tom Jolliffe, Q.C.