

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**THE MINISTER OF PERSONNEL for the GOVERNMENT OF THE
NORTHWEST TERRITORIES**

(hereinafter called the "employer")

AND:

THE UNION OF NORTHERN WORKERS

(hereinafter called the "union")

(POLICY GRIEVANCE - ARTICLE 36 - CLASSIFICATION NO. 96-520)

BOARD OF ARBITRATION

Mervin I. Chertkow - Single Arbitrator

ADVOCATES

Guy Bisson - for the employer

Chris Dann - for the union

DATE AND PLACE OF HEARINGS

July 31st, 1996 at Hay River, N.W.T.

DATE OF AWARD

August 13th, 1996

A W A R D

I

This dispute was heard under the expedited arbitration procedure as set out in article 37.27 of the collective agreement between the parties.

This policy grievance involves three grievors who are Airfield Maintenance Specialists classified at the TR OT I level. The grievors filed a classification appeal on February 28th, 1996 and in accordance with article 36.03 (1) (b) of the collective agreement, a Classification Appeal Board was impanelled to hear the appeal. The Appeal Board report was submitted to the Minister responsible (the Chairman of the Financial Management Board). The report, which was issued on February 29th, 1993, has not been implemented nor, I am advised, will it be implemented by the employer.

Article 36.03 of the collective agreement says as follows;

36.03 Where an employee alleges that he/she has been improperly classified with respect to his/her position, he/she may appeal to the Minister of Personnel and the following provisions shall apply:

- (1) (a) The Minister of Personnel shall refer the appeal to a Classification Appeal Board.
- (b) The Classification Appeal Board shall consist of the Deputy Minister of Personnel, the Head of the employing department, or their delegates and the employee's Shop Steward, and the Executive Secretary for the Union, or their delegates.
- (c) The Classification Appeal Board may sit in Yellowknife or at some other place in Canada which might seem

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appropriate to the Board under the circumstances.

- (d) The Classification Appeal Board may determine that the employee's classification is proper having regard to the classification specifications for his/her position and his/her Statement of Duties or the Board may decide that the employee has been improperly classified in his/her position.
 - (e) The Board shall make its report to the Minister of Personnel who will confirm the decision of the Board and notify the employee in writing within fifteen (15) days of the receipt of the Board's report.
- (2)
- (a) Should the Classification Appeal Board be unable to reach a decision or should the employee wish to pursue his/her appeal to a higher level, the Minister of Personnel shall refer the appeal to a Classification Review Board.
 - (b) The Classification Review Board shall consist of a representative of the Employer, a representative of the Union and an independent chairperson.
 - (c) The Chairperson of the Classification Review Board shall be chosen by the appointed members and where they fail to agree on the appointment of a Chairperson, the appointment shall be made by the Chief Justice of the Court of Appeal of the Northwest Territories, upon the request of either party.

(d) The Classification Review Board may sit in Yellowknife or at some other place in Canada which might seem appropriate to the Board under the circumstances.

(e) The Classification Review Board may determine that the employee's classification is proper having regard to the classification specifications for his/her position and his/her Statement of Duties, or the Board may decide that the employee has been improperly classified in his/her position.

(f) The Board shall make its report to the Minister of Personnel who may confirm decision of the Board and notify the employee and the Union in writing within fifteen (15) days of the receipt by him/her of the decision of the Board or make such other decision as to him/her seems fair and reasonable.

(g) The reply of the Minister of Personnel shall be final and binding upon the employee and the Union until such time as that employee has been promoted, transferred, or provided with a new Statement of Duties by the Employer.

II

After hearing the representations of the parties, I have concluded I am without jurisdiction to hear this dispute. ARTICLE 36 - CLASSIFICATION of the collective agreement provides a separate and discreet dispute resolution process with respect to classification of positions within the public service that are covered by the collective agreement between the parties. Article 36.03 provides a complete code, in my

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view, distinct and apart from the adjustment of other disputes between the parties as provided in article 37 of the collective agreement.

Article 36.03 (2) (g) specifically provides that the reply of the Minister of Personnel shall be final and binding upon the employee and the union until such time as that employee has been promoted, transferred or provided with a new statement of duties by the employer. I can find nothing in the language of article 36.03 which would require the Minister of Personnel to accept the decision of a Classification Appeal Board. That is so notwithstanding the unanimous recommendation of the Appeal Board that the positions in question be classified as TR OT III.

It would seem the avenue of appeal open to the union is for the employees concerned to appeal to a Classification Review Board as provided in article 36.03 (2). However, in any event, any decision of the Classification Review Board would, in my judgment, be subject to the discretion that might be exercised by the Minister of Personnel in his reply to such a report as provided in article 36.03 (2) (f) and (g).

Accordingly, these grievances are denied for the reasons stated above.

DATED at Kamloops, British Columbia, this 13th day of August, A.D.,
1996.



MERVIN A. CHERTKOW
Arbitrator