

IN THE MATTER OF AN ARBITRATION

BETWEEN:

St. Lawrence College
("the College")

and

Ontario Public Service Employees Union, Loc. 418
("the Union")

Classification Grievance of P. O'Brien

ARBITRATOR:

Mary Lou Tims

APPEARANCES:

FOR THE COLLEGE:

J. Gibson – Manager, Labour Relations
P. Ellis – Application Services Manager

FOR THE UNION:

R. Bresee – Local Union President
P. O'Brien - Grievor

Hearing held in Kingston, Ontario on February 9, 2010.

AWARD

I have before me the November 26, 2007 grievance of Mr. Pat O'Brien. Mr. O'Brien holds the position of Systems Analyst at St. Lawrence College in Kingston, Ontario. His grievance alleges that his position has been improperly classified at Payband J and seeks reclassification to Payband K.

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

Both parties filed written briefs prior to the hearing in accordance with the collective agreement. In addition, the grievor and his supervisor, Mr. Peter Ellis, Application Services Manager, testified at the hearing.

Included in the College's brief was an Arbitration Data Sheet setting out the parties' respective positions. Although the document states that the grievor seeks reclassification at Payband K, the total points sought by the Union fall within Payband L. The Union acknowledged that such request goes beyond that set out in the grievance, and it offered an explanation for the change in its position. Although the College asserts that the Systems Analyst position is properly rated at Payband J, it indicated that it does not in the present circumstances object to my considering and deciding the Union's request that Payband L is the appropriate rating.

The parties agreed that any compensation owing as a result of this award would be payable retroactive to March 1, 2007 notwithstanding article 18.4.1.1. of their collective agreement.

The Position Summary found in the Position Description Form ("the PDF") filed by the parties describes the grievor's position as follows:

Provides high-level business and systems analysis and advice for the tri-campus Student Administration, Academic and Financial College Information systems. Responsible for troubleshooting complex system issues and problems, mentoring programmer-analysts and providing leadership within the applications development team. Responsible for the maintenance of current systems, the analysis, design, development and implementation of new batch and on-line computer applications systems to meet user requirements. Provides technical expertise on issues related to the maintenance of current systems, new development and implementation of systems processes and applications, in addition to documenting new operational and user procedures.

The Duties and Responsibilities of the Systems Analyst as summarized in the PDF are as follows:

1. Plans, coordinates and prioritizes multiple concurrent major work assignments/projects based on stakeholder needs and conflicting business deadlines. Consults, advises and works with managers, senior staff and external agencies in defining and translating business requirements into system requirements. Provides high-level guidance, instruction and expertise to system users and members of the development team, including programmer-analysts.
2. Provide expertise in all aspects of systems analysis. Analyze administrative and academic issues in terms of applications, systems programming and user and organizational requirements. Research and investigate unfamiliar situations and problems that are not well defined, which may require the development of innovative and creative solutions.
3. Provides ERP system project leadership, coordinating and prioritizing work assignments/projects based on stakeholder and organizational requirements and conflicting business deadlines. Provides high-level advice, information sharing and programming expertise at a senior level through direct contact with end clients. Produces reference/research and technical documentation.
4. Conducts application testing in support of upgrades & installations. Institutes procedures/standards to maintain the integrity, security of the applications environments. Ensures quality of the system documentation.

There was no dispute between the parties regarding the content of the PDF. The rating of the following five factors is in issue: Analysis and Problem Solving, Independence of Action, Service Delivery, Communication and Physical Effort.

ANALYSIS AND PROBLEM SOLVING

The College rated Analysis and Problem Solving at level 4, regular and recurring and level 5, occasional. The Union seeks a rating of level 5, regular and recurring.

The parties agreed that analysis and problem solving are significant features of the Systems Analyst position. In Mr. Ellis' words, "analysis and problem solving is a short description of what a Systems Analyst does." This is evident from the PDF.

It is also clear that the Systems Analyst performs analytical and problem solving functions at a high level. Again, this is amply reflected by the evidence adduced in the hearing and by the PDF.

According to the Support Staff Job Evaluation Manual ("the Manual"), level 4 situations and problems "are not readily identifiable and often require further investigation and research," while level 5 situations and problems are "complex and multi-faceted and symptoms are vague or incomplete." The Union asserted in its brief that although "the initial challenges are presented to the employee in broad strokes," the grievor must "explore not only the readily identifiable components of the issues and provide solutions, but . . . go beyond that and determine the ramifications of these development processes."

The Union addressed the examples set out in the PDF and urged me to conclude that the issues addressed by the Systems Analyst in the course of his duties are "complex and multi-faceted." The Union's representative noted that the level 4 factor definition contemplates that further investigation and research are only "often" required in order to

identify a problem. In his submission, the level 5 definition suggests that investigation is invariably required and better describes the analytical and problem solving role of the Systems Analyst.

The College suggested in its brief that the issues encountered by the grievor in the course of his duties are “readily identifiable” and are “usually brought forward to the incumbent by others.” Mr. Ellis acknowledged, however, that within certain parameters, the problems and situations encountered by the grievor might be properly characterized as both complex and multi-faceted

I do not accept the College’s suggestion that the situations and problems with which the Systems Analyst works are readily identifiable. Rather, it seems to me that they are not readily identifiable and often require further investigation and research by the grievor within the meaning of the level 4 factor definition. The evidence established that the grievor may be alerted by a system user of an issue to be addressed, but that he identifies or defines the problems based on investigation and research. By way of example, the PDF speaks to the grievor’s role in integrating external platforms and systems with the College’s Enterprise Resource Planning application infrastructure. According to the PDF, although enhanced and automated communications with financial institutions is identified and brought forward to the grievor as an objective by College management, the grievor must “gain an extensive understanding of departmental operations and business processes, along with assessing the compatibility of the internal/external technologies involved” so as to define the situation or problem. In my view, this and other examples in the PDF amply reflect the need for the Systems Analyst to investigate and research situations and problems that are not readily identifiable. Although I am satisfied that the level 4 factor definition appropriately describes the role

of the Systems Analyst in identifying problems, I recognize that the situations and problems in issue may arguably also be described as “complex and multi-faceted.”

In determining the proper regular and recurring rating of this factor, however, I must consider the factor definitions as a whole, and must apply the rating that best fits taking into account the definitions in their entirety. The Manual states in this regard that “the entire definition needs to be assessed to ensure that it appropriately fits the description contained within the PDF.” (p. 5)

The Manual distinguishes between levels 4 and 5 problem solution. Level 4 solutions “require the interpretation and analysis of a range of information according to established techniques and/or principles.” The Manual definitions must be considered, and “established techniques and/or principles” is a term defined as follows:

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

According to the Manual, problem solving at level 5 requires “the interpretation and analysis of information within generally accepted principles.” “Generally accepted principles” are defined as follows:

More general statements or parameters used to describe the desired outcome. Can be defined as the collectivity of moral or ethical standards or judgements.

In the Union’s submission, “established techniques and/or principles” as contemplated by the level 4 factor definition refer to departmental guidelines. The Union accepted that the Systems Analyst does not analyze or solve problems through the use of “ethical standards.” It emphasized, however, that the grievor creates new processes and customizes responses, and that in doing so, must “go back to the procedures and theories

taught to Systems Analysts” and use his general background, judgment, knowledge and skills to resolve the problems he encounters. In the Union’s submission, the grievor thereby solves problems through the interpretation and analysis of information “within generally accepted principles” as defined in the Manual.

The Union referred to the PDF and offered a number of additional examples in support of its argument. The Union’s representative described that the Systems Analyst inserts remarks when writing program code. He acknowledged that the requirement to document remarks into code is an “established technique,” but suggested that the process by which the grievor does so involves the application of “generally accepted principles.” The Union offered by way of analogy the requirement that an artist work on a canvas of pre-determined dimensions. While the format in which the artist works is established, the Union suggested that the artist’s work is nonetheless completed according to broader “generally accepted principles.”

The College argued in its brief that although solutions to problems encountered by the Systems Analyst “generally require further research and investigation,” such research is conducted “systematically according to technical/guidelines.” The College suggested that sources available to the Systems Analyst include “existing systems and technical documentation, vendor contacts, client feedback, (and) online resources.” Mr. Ellis agreed that the grievor “builds solutions from the ground up” after receiving a “loose description” from a system user. He acknowledged that the problem solving role in translating user needs into computer programs involves much creativity, but suggested that “established techniques and/or principles” form the basis upon which imagination is engaged and solutions are developed.

The evidence before me establishes that the grievor is required to creatively fashion responses to the situations he encounters. I recognize as well that in doing so, he is “expected and encouraged to initiate new techniques and standards,” a point emphasized by the Union and reflected in the PDF. Mr. Ellis acknowledged the need for the Systems Analyst to creatively build solutions. He testified, however, that established programming techniques and principles are the very foundation upon which creative solutions to diverse problems are formulated. The evidence before me and the PDF support such conclusion. I am satisfied that the Systems Analyst solves problems through the interpretation of information “according to established techniques and principles” or, in the language of the relevant definition, through “recognized guidelines and/or methods to accomplish a desired outcome.” To the extent that the grievor “goes back to the procedures and theories taught to Systems Analysts” as argued by the Union, I am not convinced that he thereby seeks solutions to problems through “the interpretation and analysis of information” within the broader “generally accepted principles” as defined.

I have considered the Union’s argument as well that the grievor is required to work within a number of legislated deadlines. I am not convinced that a level 5 regular and recurring rating is warranted on such basis.

Taking into account the level 4 and level 5 factor definitions in their entirety, I am of the view that the regular and recurring rating of this factor best fits within the level 4 definition. The College’s rating of Analysis and Problem Solving at level 4, regular and recurring and level 5, occasional is confirmed.

INDEPENDENCE OF ACTION

The College rated this factor at level 4, regular and recurring. The Union seeks a rating of level 5, regular and recurring.

The Manual defines level 4 Independence of Action as follows:

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

Level 5 Independence of Action is defined as follows:

Position duties are completed according to broad goals or objectives.
Decisions are made using College policies.

The Notes to Raters distinguish between levels 4 and 5 as follows:

Level 4 – the only parameters or constraints that are in place to guide the position’s decision-making are “industry practices” for the occupation and/or departmental policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

Level 5 – the only parameters or constraints that are in place to guide the position’s decision-making are College policies. The position has the autonomy to act within these boundaries and would only need to consult with the supervisor (or others) on issues that were outside these parameters.

The parties agreed that the Systems Analyst functions with a high degree of independence. They differ as to the parameters within which the position operates.

The Notes to Raters state that the following elements are to be considered when rating this factor:

- the types of decisions that the position makes
- what aspects of the tasks are decided by the position on its own or what is decided by, or in consultation with, someone else, such as the supervisor
- the rules, procedures, past practice and guidelines that are available to provide guidance and direction

The Union accepted that the Systems Analyst undertakes projects of a defined scope. It argued, however, that the position is responsible for independently developing solutions “to fit the objectives of the project which are within the strategic goals of the College.” It stated as follows in its brief:

Throughout the development process the incumbent must make decisions about the applications (sic) ability to achieve the goals set out in the project description. Ultimately, each of these applications may result in a modified practices and procedures (sic) performed by numerous clients and stakeholders. The incumbent is presented with he (sic) challenges within the scope of the project and must then deploy the resultant solutions in a manner that meets the needs described.

While the Union acknowledged that there are a number of departmental policies addressing “how to bring something to production,” it took the position that the grievor makes decisions within the ambit of “the broader strategic goals of the college, using industry practices within the specifics of the project.” According to the Union’s brief, “all components of the deployed solution below that of a direct policy change are within the purview of the systems analyst.” The Union stated that although Mr. Ellis and the user sign off upon project completion, how a project “rolls out” is for the Systems Analyst to decide. It suggested that the grievor works within the College’s “strategic goals” and exhibits Independence of Action at level 5.

The Union referenced the Analysis and Problem Solving section of the PDF and noted that the grievor “is required to take the initiative in the creation of new standards, policies, processes and procedures.” The grievor described his role with respect to the College’s Strategic Plan to improve services to students and his work on the pre-authorized payment of College suppliers plan. He testified that he designs solutions which result in the need for policy changes. The grievor gave evidence regarding the “negotiation” of solutions with system users. He acknowledged that if agreement is not

reached, he must find alternate solutions. The parties both accepted that the grievor does not impose decisions but seeks agreement.

The College argued that the Systems Analyst is provided with specific goals and objectives through discussions with users. He typically makes decisions, in the College's submission, based on industry practices and departmental standards, and must operate within such parameters. According to Mr. Ellis, changes in departmental practice and policy are departmental decisions. If a solution proposed by the grievor is not in accord with departmental policy, it does not "see the light of day." Mr. Ellis explained that the Systems Analyst has full independence to create a solution, but that the final sign off is by the end user. To the extent that issues requiring College policy decisions arise, these are referred to the supervisor or to the executive stakeholder. In the College's submission, all staff works within College objectives. The fact that the grievor does so does not in itself justify a level 5 rating of this factor.

Having considered the parties' positions, I am not convinced by the Union that this factor should be rated at level 5, regular and recurring. The language of the PDF construed in light of the evidence establishes that the Systems Analyst operates with a high level of independence, and that the fulfillment of project requirements may require that the grievor "take the initiative in the creation of new standards, policies, processes and procedures" as contemplated by the Analysis and Problem Solving section of the PDF. It is clear in my view, however, that "position duties are completed according to specific goals or objectives" and not according to "broad goals and objectives." Further, it is clear from the evidence and from the PDF that the Systems Analyst makes decisions "using industry practices and/or departmental policies" as defined and not by using College policy. While the Independence of Action section of the PDF clearly reflects that

the grievor “is empowered to be completely creative,” this is “within the context of departmental teamwork, objectives, and standards.” The PDF further states that “full creativity is required and given in identifying alternate solutions . . . as long as the Incumbent’s work meets department standards.” According to the PDF, College policy decisions are “typically referred to the Application Manager or the executive stakeholder.”

I am not convinced by the Union that this factor should be rated at level 5. The College’s rating of Independence of Action at level 4, regular and recurring is confirmed.

SERVICE DELIVERY

The College rated this factor at level 3, regular and recurring. The Union seeks a rating of level 4, regular and recurring.

The relevant factor definitions are set out in the Manual as follows:

3. Tailor service based on developing a full understanding of the customer’s needs.
4. Anticipate customer requirements and pro-actively deliver service.

The Manual further defines a number of terms.

“Anticipate” is defined as follows:

Given advance thought, discussion or treatment to events, trends, consequences or problems; to foresee and deal with in advance.

“Proactive” is defined to mean “to act before a condition or event arises.”

The dispute between the parties here is narrow in focus.

The parties agreed that the Systems Analyst requires a full understanding of customer needs in order to deliver service. In the Union’s submission, however, the grievor must go beyond that and must also anticipate customer requirements and pro-actively deliver service. Its position was set out in its brief as follows:

However, when recognizing the broader implications of changes to a highly complex database structure, and the accountability to ensure its stability, the incumbent must review the implications of all of his own and others changes and proactively either protect or determine solutions to those implications. Any change to data input, storage or calculations can have a cascading effect on the entire structure. This is highly pro-active in nature. . . .

The grievor addressed a number of specific examples which the Union suggested demonstrate anticipation of customer requirements and proactive delivery of service. The grievor commented on the need to address potential growth and maintenance of applications. He addressed the need to ensure that the Point of Sale database does not become too large. He also spoke of the need to compact a database so as to maintain data where a number of parties use applications in the academic schools. He described steps taken to avoid anticipated problems with the Standard Workflow Form application.

While the College did not dispute that such functions are performed by the Systems Analyst, it challenged the Union's characterization of such roles as anticipatory or proactive. Where work is done to address pitfalls with the Standard Workflow Form application, for example, the College suggested that this demonstrates reaction to a past problem and not proactive service. To the extent that the Systems Analyst considers future maintenance requirements, this simply reflects his "full understanding" of customer needs. In the College's submission, the grievor develops a thorough understanding of customer needs and provides service on an essentially reactive basis. The examples relied upon by the Union are, in the College's view, reflective of this.

The Notes to Raters are of assistance in addressing the parties' positions here and are set out as follows:

Level 3 refers to the need to "tailor service." This means that in order for the position to provide the right type of service, he/she must ask questions to develop an understanding of the customer's situation. The customer's

request must be understood thoroughly. Based on this understanding, the position is then able to customize the way the service is delivered or substantially modify what is delivered so that it suits the customer's particular circumstances.

Level 4 means that the position designs services for others by obtaining a full understanding of their current and future needs. This information is considered in a wider context, which is necessary in order for the position to be able to structure service(s) that meet both the current stated needs and emerging needs. The position may envision service(s) before the customer is aware of the need.

Having considered the PDF in light of the evidence adduced in these proceedings, I am satisfied that the Systems Analyst not only tailors service based on developing a full understanding of the customer's need, but indeed, also anticipates customer requirements and proactively delivers service within the factor definitions.

The PDF is clear that the Systems Analyst gives "careful consideration to the impact of the solution before taking action or making a decision" (p. 7). The Service Delivery section of the PDF contemplates the "analysis of business processes to create and maintain software applications," "forecasting challenges," and the development of "an understanding of needs of or potential needs of the users."

It is clear, in my view, that it is incumbent upon the Systems Analyst to give advance thought to consequences or problems and to take appropriate action before a condition or event arises. I accept that the grievor considers information in order to structure services that meet both "current stated needs and emerging needs," and that this factor is properly rated at level 4, regular and recurring. I so order.

COMMUNICATION

The College rated this factor at level 3, regular and recurring and level 4, occasional. The Union seeks a rating of level 5, regular and recurring, or alternatively, level 4, regular and recurring and level 5, occasional.

The relevant factor definitions found in the Manual are set out as follows:

3. Communication involves explaining and/or interpreting information to secure understanding. May involve communicating technical information and advice.
4. Communication involves explaining and/or interpreting information to instruct, train and/or gain the cooperation of others.
5. Communication involves imparting information in order to obtain agreement, where interests may diverge, and/or negotiation skills to resolve complex situations.

The following terms defined in the Manual are noteworthy:

Instruct – to give knowledge to or provide authoritative information within a formal setting such as a workshop or lab environment.

Train – impart knowledge and/or demonstrate skills within a formal instructional setting.

Negotiate – to exchange views and proposals and obtain agreement with the aim of reaching agreement by shifting possibilities, proposals, and pros and cons. Issues are complex and outcome could be contentious.

The Union noted that this factor measures both verbal and written communication skills. It relied on the PDF language indicating that the Systems Analyst provides information and advice related to college systems. The Union argued that the grievor is responsible for training College staff in the use of new modules and applications. The grievor gave evidence describing on site training he has provided to staff. He noted that he may in the future train staff in the Project Room, which he described to be a computer lab setting.

While the Union acknowledged that the frequency of project work varies, the grievor testified that he provides training “before rolling out a prototype.”

The Union also asked that I consider the need for the grievor to produce training documents for all projects.

In the Union's further submission, the grievor is required to "negotiate" project "timelines and deliverables" with staff, management and external contacts. This includes the need to obtain user signoff upon project completion. The Union argued that given the complexity of projects with which the Systems Analyst is involved, it is not always possible to meet all objectives. In such circumstances, it is necessary for the grievor to propose "shifted objectives" so as to get stakeholder sign off. Again, although the Union was clear that the frequency of projects varies, it suggested that the need to negotiate in this context is a "core duty" to be reflected in a regular and recurring rating.

Alternatively, in the Union's submission, one can also characterize the Systems Analyst's communication with relevant parties as the imparting of information "in order to obtain agreement" within the meaning of the level 5 factor definition. The Union referenced the need for the grievor to obtain "buy in" to available solutions, and suggested that this is a "core function" to be reflected in a regular and recurring rating.

The College argued that this position is properly rated at level 3, regular and recurring and level 4, occasional.

In its submission, the Systems Analyst explains or interprets information "to secure understanding" within the meaning of the level 3 factor definition. The College argued that the grievor does not offer instruction "within a formal setting such as a workshop or lab environment" and does not train in "a formal instructional setting" as contemplated by the level 4 factor definition. The possibility of future changes can have no bearing on the rating of the position at present.

The College also addressed the communication required of the grievor when engaged in project work. It acknowledged that it is occasionally necessary for the Systems Analyst to "gain commitment from others in the areas of prioritizing tasks."

This, in the College's submission, is properly reflected in a level 4, occasional rating. The College argued that there is no basis upon which a level 5 rating is warranted here.

The PDF and the evidence adduced in the hearing establishes, in my view, that the grievor explains and interprets information to secure understanding within the meaning of the level 3 factor definition.

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

“Explain” and “interpretation” in level 3 refers to the need to explain matters by interpreting policy or theory in such a way that it is fully understood by others. The position must consider the communication level/skill of the audience and be sensitive to their abilities and/or limitations. At this level, if the exchange is of a technical nature, then usually the audience is not fully conversant or knowledgeable about the subject matter.

Level 4, on the other hand, addresses instruction or training in a formal setting as addressed by the relevant definitions. The evidence is clear that the grievor does not train or instruct in such settings, and the possibility that he may do so in the future has no bearing on present rating.

The parties both described the grievor's role in communicating with others in the context of project work. It is clear from the evidence and from the PDF that system users need to “buy into” solutions which the Systems Analyst proposes. The PDF describes that the grievor discusses the scope of projects, the results, and the roles of team members. The PDF also sets out as a daily or weekly example, the need for the grievor to explain “the full impact of changes” with “tact and diplomacy.” While there is no question that the Systems Analyst is required to communicate with interested parties when engaged in project work, the Union was clear that the frequency with which this occurs varies. The Union argued that the requisite communication is a “core function” for

the position, however, and that it must therefore be reflected in a regular and recurring rating.

The Notes to Raters indicate that the “assigned communication and interpersonal skills needed” at levels 4 and 5 are “at an extremely high level,” and that “the use of the word ‘negotiation’ is . . . quite specific in this factor.” The Notes describe “negotiation” in the following manner:

“Negotiation” refers to having the authority to commit to a solution or compromise. An incumbent who communicates at this level also works within broad parameters and the preferred outcome is also broadly defined. The incumbent needs to have the skills/tools to reach an agreement that is then binding on the College. Normally, the audience will have divergent views or opposing objectives.

I am not satisfied that the Systems Analyst is required to engage in negotiations as contemplated by the level 5 factor definition.

Similarly, I am not convinced by the Union that the communication required of the grievor in the course of project work must be characterized as the imparting of information “in order to obtain agreement” as opposed to communication to “gain the cooperation of others.”

The evidence before me does not permit the conclusion that level 4 communication to gain the cooperation of others should be reflected in a regular and recurring rating. While the College’s evidence suggested that this is an occasional function, the Union argued that it is a core function of varying frequency that should be reflected in a regular and recurring function. The fact that this may be a significant and important skill in the context of this position does not, in my view, speak to the frequency with which it is required. Having considered the PDF in light of the evidence before me, I am not prepared to amend the level 4 occasional rating of this factor.

I am of the view that this factor is properly rated at level 3, regular and recurring and level 4, occasional.

PHYSICAL EFFORT

The College rated this factor at level 1, regular and recurring and level 2, occasional. The Union seeks a rating of level 2, regular and recurring.

According to the Manual, this factor measures “the degree and frequency of the physical effort required by the position....” “Physical effort” according to the Manual refers to “the physical strain and fatigue caused by periods” of a number of enumerated physical activities including “continuous standing or sitting.” The Manual provides that “consideration is given to whether individuals in the position are able to move freely or change posture or stance.”

The relevant factor definitions in the Manual read as follows:

1. The position requires light physical effort.
2. The position requires moderate physical effort.

“Light” is defined in part as “able to adjust working position to minimize physical stress.” “Moderate” is defined in part as “restricted ability to adjust working position for longer periods of time (over 30 minutes) or sustaining awkward work positions (up to 30 minutes).”

The PDF includes as a “physical activity that is required on a regular basis” daily “sitting for long periods of time” in excess of two hours at a time, with ability to reduce strain noted as “n/a.”

The Union argued in its brief that the grievor “is required sit (sic) hunched over a computer desk pouring over vast quantities of data and analyzing highly complex processes as represented on screen,” with limited ability to adjust positions for extended

periods of more than two hours at a time on a daily basis. In the Union's submission, this warrants a regular and recurring rating at level 2. The College took the position in its brief that there is "no evidence that the position performs the moderate physical effort indicated in level 2. No lifting, pushing, pulling or restricted movement is indicated. Sitting for periods of greater than 2 hours has been recognized under the occasional rating."

The grievor testified that the vast majority of his seven hour working day is spent sitting. While Mr. Ellis accepted that the grievor is required to concentrate for long periods of time, he disputed that the grievor is required to be "hunched over" a desk. He suggested that the grievor is free to get up from his sitting position to stretch.

I am of the view that this factor should be rated at level 2, regular and recurring. The PDF reflects that sitting for periods in excess of two hours is required on a daily basis. The grievor testified that he finds it necessary in the performance of his duties to sit for the majority of the seven hours of his working day. I am satisfied that the position requires moderate physical effort as defined, on a regular and recurring basis.

I order that the College rate this factor at level 2, regular and recurring.

CONCLUSION

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

The College is ordered to amend the rating of the Service Delivery and Physical Effort factors as set out herein.

The Systems Analyst position is thus properly evaluated at 722 points, bringing it within Payband K. The College is ordered to compensate the grievor at Payband K retroactive to March 1, 2007 in accordance with the parties' agreement.

I retain jurisdiction in this matter to assist the parties in the implementation of this award.

DATED at TORONTO this 22nd day of February, 2010.

“M. Tims”

Mary Lou Tims, Arbitrator