Federal Court  Cour fédérale

Date: 20190318

Docket: T-330-18

Citation: 2019 FC 331

Ottawa, Ontario, March 18, 2019

PRESENT: The Honourable Madam Justice Walker

BETWEEN:

HARRY DENIS ADAMIDIS

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Harry Denis Adamidis, seeks judicial review of a decision (Decision) of the Director General, Integrated Resource Management, of the Immigration and Refugee Board of Canada (IRB) confirming her denial of his classification grievance upon initial examination. The application for judicial review is brought pursuant to section 18.1 of the *Federal Courts Act*, RSC 1983, c F-7.

[2] For the following reasons, the application will be dismissed.

I. Facts

[3] The Applicant is a Member of the Immigration Division (ID) of the IRB. The ID Member position is classified at the PM-06 level in the federal public service classification structure established by the Treasury Board in its capacity as the employer. The ID Member position has been classified as a PM-06 position since September 2006 when the IRB implemented the decision in *Lapointe v Canada (Treasury Board)*, 2006 FC 724, and reclassified the position from the PM-05 to the PM-06 level retroactive to 2001.

[4] By way of background for this application, the IRB has four divisions: the ID, the Immigration Appeal Division (IAD), the Refugee Protection Division (RPD), and the Refugee Appeal Division (RAD). ID Members and RPD Members occupy positions classified at the PM-06 level. Both positions are staffed by the Public Service Commission pursuant to the *Public Service Employment Act*, SC 2003, c 22. Members of the IAD and the RAD are Governor in Council (GIC) appointees pursuant to subsection 153(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[5] On January 14, 2016, the Applicant wrote to the Chairperson of the IRB, stating that the classification of the ID Member position did not comply with Treasury Board policy instruments regarding classification. The two met on June 28, 2016.

[6] The Applicant then met with IRB management on July 22, 2016 and was informed that the IRB's GIC appointees could not be used as comparators with ID Members for classification

purposes as they are not employed in the public service for this purpose. IRB management also stated that the ID Member position was properly classified based on the PM standard.

[7] On December 8, 2016, the Applicant provided written submissions to the Chairperson regarding his classification concerns. On behalf of ID Members, he requested that a classification committee be convened to assess whether it is reasonable to classify the ID Member position using the PM classification standard. He noted that the value of the work performed by ID Members was being determined using a 28-year-old work evaluation standard. He stated:

> Of greater concern, the IRB is not complying with the Treasury Board's Policy on Classification. Section 5.1.1 of that policy makes clear that employees must be paid according to the relative value of their work. The current ID Member classification decision explicitly states that the value of our work is relative to the work of GCQ-3 positions. Despite this, we are paid well below the industry standard.

[8] Section 5.1.1 of the Treasury Board Policy on Classification introduced in 2015 (2015 Classification Policy) provides in part that it supports the equitable, consistent and effective establishment of the relative value of work in the Core Public Administration (CPA). In his submissions, the Applicant stated that IRB staff had informed him that comparisons between ID Members and GIC appointees could not be made because they reflect different types of employment. The Applicant argued that this position violates the 2015 Classification Policy.

[9] On June 2, 2017, Ms Piret, Manager, Organization Design and Classification at the IRB, responded to the Applicant's December 8, 2016 submissions. She apologized for her delayed response, stating that it was necessary to confirm some information prior to responding. Ms Piret

refused the Applicant's request to convene a classification committee. The substance of her letter (Piret Letter) for purposes of this application is as follows:

> Your letter refers to similar exercises that took place at the Trade-Marks Opposition Board (in 1999) and at the Occupational Health and Safety Tribunal (in 2008). Based on the information gathered from these two (2) organizations, the PM group allocation was maintained in both cases. We questioned both organizations if they had any new decision since the last classification committees were held. In the two (2) cases, the group allocation remained unchanged. These decisions support IRB's classification decision to allocate the position of Member to the PM group. Consequently, we will not be convening a classification committee to review the group allocation for the Member position.
>
> In addition, contrary to what is stated in your letter, GIC Member positions are not subject to the Treasury Board Policy on Classification. Consequently, we believe that we are in compliance with section 5.1.1 of the Policy.

[10] On June 22, 2017, the Applicant filed a classification grievance (Grievance) on behalf of ID Members. The corrective action sought in the Grievance was that "my position be classified in a manner that conforms with 5.1.1 of the Treasury Board's Policy on Classification". The date of the act giving rise to the Grievance was stated to be June 2, 2017.

[11] On July 20, 2017, Ms Wyant, Director General, Integrated Resource Management Branch of the IRB, rejected the Grievance as untimely. She stated that the most recent classification action affecting the ID Member position occurred on September 26, 2006. She cited section 1.3.1 of Appendix B to the Treasury Board Directive on Classification Grievances (Directive) which requires that:

> 1.3.1 A classification grievance must be presented by an employee no later than 35 calendar days after the day on which the employee receives notification or, when the employee has not received such notification, no later than 35 calendar days after the day on which

> he or she first becomes aware of an action or circumstance affecting the classification of the position he or she occupies.

[12] The Applicant responded on August 14, 2017, stating that the grievors were grieving the IRB's decision not to address a classification matter related to Treasury Board policy. They were not grieving the 2006 classification action. He argued that the June 2, 2017 refusal to convene a classification committee (Piret Letter) was a new decision that constituted a circumstance affecting the grievors' classification within the meaning of section 1.3.1.

[13] On September 11, 2017, Ms Wyant responded to the Applicant. She referred to his December 8, 2016 submissions which made reference to two federal government organizations that had held classification committees. She stated that the Piret Letter clarified those references and did not constitute a classification decision as no job description was reviewed by a classification committee. The last classification decision was issued in September 2006. Ms Wyant explained that the reason for her July 20, 2017 response to the Grievance was to inform the Applicant that the time limit to submit a classification grievance had expired. Ms Wyant also noted that the IRB had no authority to develop or amend existing classification standards. Her letter concluded as follows:

> If you think it would be helpful, I would gladly set up a meeting to discuss the classification directive and explain the mandate of a classification grievance committee. Your numerous references to Governor in Council appointees do not constitute a basis for comparison with respect to the classification evaluation process – their mandate requires the use of classification standards that are in place within the core public administration.

[14] On October 25, 2017, the Applicant responded. He stated that the Grievance was based on a circumstance affecting the classification of the ID Member position. The issue was that the

current means of classifying the position did not accord with the 2015 Classification Policy. The Applicant argued that:

> This is a new issue which is not been previously dealt with by the IRB. On 2 June 2017, Nadine Piret advised ID Members that the IRB would not be resolving this issue. This triggered the grievance.

[15] The Applicant asked again why a violation of the 2015 Classification Policy did not constitute "a circumstance affecting the classification of the position".

[16] Ms Wyant responded to the Applicant by way of letter dated January 24, 2018. Her response is the Decision under review in this application.

II. Decision under review

[17] In the Decision, Ms Wyant referred to her July 20, 2017 letter and reiterated that the Grievance was rejected because it was untimely. The last classification decision affecting the ID Member position was made in September 2006.

[18] Ms Wyant also addressed the Applicant's question regarding section 1.3.1 of Appendix B to the Directive which permits the submission of a classification grievance based on an action or circumstance affecting the classification of the grievor's position. She noted that the Applicant had asked why ID Member positions were not being compared to GIC positions at the IRB. Ms Wyant explained that the comparison could not be made because GIC appointees do not meet the definition of "employed in the public service" pursuant to the *Federal Public Service Labour Relations Act*, SC 2003, c 22 (FPSLRA).

III. Issues

[19] The Applicant has raised a number of issues regarding the Decision. I will address the following issues as they are determinative of this application:

1. Was the decision to deny the Grievance on the basis that it was not timely reasonable?

2. Did the denial of the Grievance at the initial examination stage breach the Applicant's right to procedural fairness?

[20] The parties also made written and oral submissions regarding the issues of whether GIC positions at the IRB could be used as classification comparators for the ID Member positions and whether Ms Wyant unreasonably concluded in the Decision that the IRB was prohibited from doing so.

[21] There are two aspects to the Decision. First, Ms Wyant confirmed her July 20, 2017 decision that the Grievance was not presented within the 35-day limitation period set out in section 1.3.1 of Appendix B to the Directive. In my view, this conclusion was the basis of the IRB's denial of the Grievance. If a grievance is untimely, it cannot proceed. If I find that the conclusion in the Decision regarding timeliness was reasonable, the application must be dismissed subject to my analysis of the procedural fairness issue raised by the Applicant.

[22] Second, Ms Wyant referred to the issue of why the ID Member positions were not being compared to the IRB's GIC positions. Ms Wyant reiterated the IRB's position that the GIC positions could not be used as comparators because GIC appointees do not meet the definition of being employed in the public service for purposes of the FPSLRA. She stated that the IRB is

required to apply the existing occupational group definitions and job evaluation standards in accordance with section 5.1.1 of the Policy on Classification.

[23] The Applicant submits that Ms Wyant erred in her statement that GIC appointees are not employed in the public service pursuant to the FPSLRA. As I explain below in my analysis, I have found that the Decision to deny the Grievance because it was untimely was reasonable. Therefore, I will not consider this argument or the parties' submissions concerning classification relativity more generally. I would note only that the Respondent's reasons for its position in this regard extend beyond the provisions of the FPSLRA and involve a broader analysis of the federal public service classification system and process.

IV. Standard of review

[24] In *Dunsmuir v New Brunswick*, 2008 SCC 9 (*Dunsmuir*), the Supreme Court of Canada held that a standard of review analysis need not be conducted in every instance. If the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. If not, the court must proceed to an analysis of the factors making it possible to identify the proper standard of review (*Dunsmuir* at para 62).

[25] In the present case, the parties submit that the Decision must be reviewed against the standard of reasonableness. Neither party refers to jurisprudence in which the initial screening of a classification grievance was the decision subject to review. By way of parallel reasoning, the Respondent cites a number of cases in which this Court has applied the reasonableness standard

in reviewing classification decisions made by classification grievance committees and initial screening decisions made in different statutory schemes.

[26] In *Begin v Canada (Attorney General)*, 2009 FC 634 (*Begin*), the decision under review was a decision of a classification grievance committee. The Court held that the standard of review for the decision was reasonableness in light of the specialized role and expertise of the committee (*Begin* at para 8; see also *Canada (Attorney General) v Gilbert*, 2009 FCA 76 at paras 21-23). This Court has also reviewed decisions taken at various stages of the grievance process for reasonableness (see, for example, *Backx v Canadian Food Inspection Agency*, 2013 FC 139 at para 19; *Spencer v Canada (Attorney General)*, 2010 FC 33 (*Spencer*)).

[27] In *Kohlenberg v Canada (Attorney General)*, 2017 FC 414 at para 18 (*Kohlenberg*), Justice Brown held that a final-level grievance decision pursuant to subsection 208(1) of the FPSLRA was reviewable on the standard of reasonableness. In *Green v Canada (Indigenous and Northern Affairs)*, 2017 FC 1122 at para 16, Justice McDonald held that the standard of review of the denial of a harassment grievance for lack of timeliness was reasonableness.

[28] In terms of initial screening decisions made during a grievance process, the Respondent relies on *Haymour v Canada Revenue Agency*, 2013 FC 1072 at para 10 (*Haymour*), a case that involved the review of a dismissal for timeliness of a request for an independent review of an individual's termination. In *Haymour*, Justice Manson stated that the standard of review of the decision in question was reasonableness.

[29] Having considered the jurisprudence, I find that the proper standard of review of the Decision is reasonableness. More specifically, the timeliness of the Grievance is a question of mixed fact and law and the conclusion in the Decision that the Grievance was not timely will be reviewed for reasonableness. As Justice Décary stated in *Aubert v Canada (Attorney General)*, 2008 FCA 386 at para 11, "[e]ssentially, this is a matter of weighing the evidence to determine who decided what and when". Although, in the present case, I would paraphrase this statement as "what was decided and when".

[30] The Decision was made by the Director General, Integrated Resource Management, of the IRB. She reviewed and applied an administrative policy and directive within her area of expertise and, as stated by Justice Near, as he then was, in *Spencer* (at para 28), the Court is in no better position on this issue. The Decision was not made by a classification grievance committee but was made within the same procedural framework. While a distinction may be drawn between the levels of expertise of a classification grievance committee and a decision-maker at the screening stage, a screening decision nonetheless requires expertise in the interpretation and application of the suite of Treasury Board policies and directives regarding classification. In my view, these factors indicate that the Decision should be reviewed for reasonableness.

[31] The issue of procedural fairness raised by the Applicant will be reviewed for correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). The Court's review focuses on the procedures followed by the decision-maker in arriving at the decision and not on the substance or merits of the case in question.

V. Statutory and Policy Background

[32] The *Financial Administration Act*, RSC 1985, c F-11 (FAA), grants jurisdiction to the Treasury Board over personnel management in the federal public service (paragraph 7(1)(e)) and over classification of positions and employees specifically (paragraph 11.1(1)(b)). Pursuant to subsection 5(4) of the FAA, the Treasury Board is empowered to determine its own rules and procedures relating to classification grievances. It has done so by establishing the 2015 Classification Policy and the Directive (*Fischer v Canada (Attorney General)*, 2012 FC 720 at paras 4-5 (*Fischer*)).

[33] The Grievance was presented pursuant to section 208 of the FPSLRA which permits public servants to grieve "any occurrence or matter affecting his or her terms and conditions of employment" (paragraph 208(1)(b)). This includes disputes regarding the classification attributed to their positions. However, a classification grievance is not referable to adjudication before the Federal Public Service Labour Relations Board or any other independent third-party tribunal. It is subject to determination by the employer in accordance with the 2015 Classification Policy and the Directive.

[34] The full text of the relevant provisions of the 2015 Classification Policy and Directive is set out in Annex A to this judgment. For ease of reference, the specific provisions of the two instruments relevant to my analysis are as follows:

> **Treasury Board Policy on Classification** (*effective July 1, 2015*)
>
> **5. Policy statement**
>
> **5.1 Objective**

This policy:

5.1.1 Supports the equitable, consistent and effective establishment of the relative value of work in the CPA and ensure[s] that jobs are classified appropriately, in accordance with the relevant occupational group definitions and job evaluation standards (classification standards).

Treasury Board Directive on Classification Grievances
(*effective July 1, 2015*)

Appendix B: Classification Grievance Procedure

1. General information

1.3 Circumstances justifying the presentation of a classification grievance and time limits

1.3.1 A classification grievance must be presented by an employee no later than 35 calendar days after the day on which the employee receives notification or, when the employee has not receive such notification, no later than 35 calendar days after the day on which he or she first becomes aware of an action or circumstance affecting the classification of the position he or she occupies.

2. Initial examination of a classification grievance

2.1 All grievances must be examined upon receipt. When a classification grievance is rejected, the deputy head or delegate will issue the decision and respond to the grievor accordingly.

VI. Analysis

1. Was the decision to deny the Grievance on the basis that it was not timely reasonable?

[35] My review of the decision to deny the Grievance due to lack of timeliness focusses on the specific wording of section 1.3.1 of Appendix B to the Directive. The parties agree that the Grievance does not result from an action affecting the classification of the ID Member position as the last classification decision affecting the position was made in 2006. The parties' timeliness

arguments are intertwined with arguments concerning on the Applicant's right to grieve as their disagreement lies first in whether a "circumstance affecting the classification of the position" of the Applicant occurred. If so, the question then becomes the date on which the Applicant first became aware of that circumstance.

[36] In his written submissions, the Applicant relies on the breadth of section 1.3.1 in asserting his right to grieve. He argues that the term "circumstance" should be interpreted in a broad and unrestricted manner, stating that "[a]ny circumstance which can be shown to affect classification can be grieved by employees". I agree that the term is broad. Black's Law Dictionary, 10th ed., defines "circumstance" as "[a]n accompanying or accessory fact, event, or condition, such as a piece of evidence that indicates the probability of an event …". However, in the context of the grievance process, the term must be subject to reasonable parameters in order to safeguard the integrity of the process and the ability of employers and employees to function within the classification system in an orderly manner. Otherwise, the time limitation set forth in section 1.3.1 becomes meaningless.

[37] The Applicant submits that the issuance by Treasury Board of the 2015 Classification Policy introduced a new requirement of equity into the classification process and, as such, was a new circumstance within the meaning of section 1.3.1. He states that he reviewed the classification of the ID Members through the lens of the new policy and identified a significant policy violation: classification inequity between GIC-appointed tribunal members and ID Members. The Applicant recounts his meetings and correspondence with the IRB and his December 8, 2016 submissions to the IRB Chairperson which asserted that the classification of

ID Members did not conform to section 5.1.1 of the 2015 Classification Policy. In disputing the Respondent's position that there has been no new information affecting the classification of the ID Member position since 2006, the Applicant states in his Memorandum of Fact and Law (Memorandum):

> 35. This is incorrect. The Treasury Board issued a new Classification Policy Suite in 2015. The employer is violating a new policy. This issue could not have been dealt with when the ID Member position was classified in 2006.
>
> (Emphasis in original)

[38] The Applicant emphasizes that section 5.1.1 requires that an employer must both equitably establish the relative value of work and ensure that jobs are classified appropriately in accordance with the relevant classification standard. He concludes this section of his written submissions as follows:

> 42. Inequity is a new and unresolved "circumstance affecting the classification" of ID Members. As such, the Applicant has the right to grieve the employer's non-compliance with the Treasury Board's new Policy on Classification.

[39] The difficulty with the Applicant's argument is that the same equitable policy objective existed in the predecessor to the 2015 Classification Policy. Section 3.1 of the predecessor Policy on Classification System and Delegation of Authority provided as follows:

> **3. Policy Objectives**
>
> 3.1 To ensure that the classification system described in this policy establishes the relative value of all work in the Public Service in an equitable, consistent, efficient and effective manner, and provides a basis for the compensation of Public Service employees.

[40] In 2004, Justice Lemieux of this Court described the then existing Treasury Board policies regarding classification and the classification system as follows (*Laplante v Canada (Food Inspection Agency)*, 2004 FC 1345 at para 15):

> [15] The purpose of the Treasury Board policy on the classification system is to ensure that the classification system determines the relative value of all work performed in the Public Service in an equitable, uniform, efficient and effective manner, and provides the bases for the payment of public service employees. Another purpose of that policy is to authorize managers to classify positions in their respective Departments in accordance with the policy, the applicable classification standard and the guidelines prepared and issued by the Treasury Board Secretariat.

[41] The Applicant's argument that inequity was a new and unresolved circumstance for purposes of section 1.3.1 of Appendix B is not persuasive. The focus of the argument, the policy objective that relative work be valued equitably, existed well prior to 2015 and was unchanged with the introduction of the 2015 Classification Policy. Therefore, I find first that any alleged inequity in the classification of the ID Member position was not a new circumstance in 2015. In addition, I find that the introduction of the new policy itself was not sufficient to constitute a new circumstance within the meaning of section 1.3.1. In other words, I do not accept the Applicant's argument that the fact that the IRB was in violation of a new policy, albeit one premised on an unchanged policy objective, was sufficient to bring his Grievance within the parameters of section 1.3.1. The facts and circumstances underlying the Applicant's arguments regarding inequality in the classification of the ID Member position were unchanged and unaffected by the introduction of the 2015 Classification Policy.

[42] Even if the introduction of the 2015 Classification Policy constituted a circumstance for purposes of section 1.3.1 of Appendix B to the Directive, the Applicant became aware of that

circumstance at the latest in 2016. In his Memorandum, he refers to his attempts between January and December 2016 to resolve the issue of inequity in the valuation of the work of ID Members. In addition, in the third paragraph of his submissions to the Chairperson of the IRB dated December 8, 2016, the Applicant refers to the 2015 Classification Policy and, specifically, to the policy objective set forth in section 5.1.1. Again, on October 25, 2017, the Applicant asked in his correspondence with the IRB why a violation of the 2015 Classification Policy did not constitute a circumstance affecting the classification of the ID Member position. Therefore, it is clear from the record that the Applicant did not submit the Grievance within 35-days of becoming aware of this new circumstance as required by section 1.3.1.

[43] In his oral submissions, the Applicant focussed his arguments differently. He argues that the triggering event for the Grievance was not the introduction of the 2015 Classification Policy. Rather, it was the Piret Letter dated June 2, 2017, the substance of which is set out in paragraph 9 of this judgment. As a result, his presentation of the Grievance on June 21, 2017 respected the 35-day limitation set forth in section 1.3.1 of Appendix B. This submission is consistent with the Applicant's grievance presentation form which noted the Piret Letter as the act or matter giving rise to the Grievance. In the Applicant's view, Ms Piret conducted a classification exercise by contacting other tribunals in response to his December 2016 submissions and this exercise affected his classification. He submits that, in characterizing the term "circumstance" broadly in this manner, he is not arguing that a grievance could effectively be filed at any time. He is relying on an identifiable triggering event giving rise to the right to grieve.

[44] The Respondent argues that the Piret Letter was not a classification decision and merely reiterated information communicated to the Applicant from the outset of his discussions with the IRB. The Respondent submits:

> [35] … Further, [the Piret Letter] does not constitute a circumstance affecting the classification of the ID Member position. This letter provided information to the applicant which communicated the status quo by reiterating the position that was communicated to the applicant from the first time the classification issue was raised – that the IRB is in compliance with the Policy on Classification, that the PM standard is the best fit, and that GIC appointees are not subject to the same classification scheme. For the employer to confirm that its actions are in accordance with an established policy objective, and to clarify the scope of the application of that policy, cannot be seen as a basis of justification for a classification grievance.

[45] I find the Respondent's submissions persuasive. In her letter, Ms Piret confirmed the IRB's position that it is in compliance with section 5.1.1 of the 2015 Classification Policy and that a classification committee would not be convened. Ms Piret makes reference to two other tribunals in response to the Applicant's prior correspondence. The Piret Letter is not a classification decision. It does not substantively analyse the classification of the ID Member position, nor does it implement any change to the classification. Its tone and content are informational. To construe the Piret Letter as a new circumstance justifying the presentation of a grievance would render the 35-day limitation period contained in section 1.3.1 illusory. At any time, an employee could submit an inquiry to an employer and, upon receipt of confirmation of the employer's position, file a grievance. Although the Applicant states that he is not interpreting the term "circumstance" to permit the presentation of a grievance at any time, in practical terms this would be the result of his argument.

[46] To summarize, I find that the rejection of the Grievance on the basis that it was untimely was reasonable. The Applicant has not established that the IRB erred in concluding in the Decision that no recent, new circumstance justified the presentation of the Grievance. The introduction of the 2015 Classification Policy did not, in itself, constitute such a circumstance as it continued the pre-existing policy objective that the relative value of work in the CPA be established equitably. Further, if the introduction of the new policy was a circumstance within the meaning of section 1.3.1 of Appendix B to the Directive, the Applicant was aware of the circumstance approximately eighteen months before the presentation of the Grievance. Finally, the Piret Letter is most properly characterized as confirmation of the employer's long-standing position regarding its compliance with section 5.1.1 of the 2015 Classification Policy and not as a triggering event justifying the presentation of a classification grievance.

2. Did the denial of the Grievance at the initial examination stage breach the Applicant's right to procedural fairness?

[47] The procedure for review of a classification grievance is set out in sections 2 and 3 of Appendix B to the Directive. A grievance is first subject to initial examination pursuant to section 2 which states that the grievance must be examined upon receipt. If the grievance is rejected at this stage, the deputy head or a delegate must issue a decision and inform the grievor. Section 2 does not provide guidance regarding the scope of issues that may be considered in the course of the initial examination. If a classification grievance requires substantive examination, a classification grievance committee consisting of three members is established pursuant to section 3 of the Appendix. It is important to note the mandate of the committee:

3.1 Mandate

> The Classification Grievance Committee is responsible for establishing the appropriate classification of the grieved position based on the work assigned by the responsible manager and described in the job description, and the additional information provided by management and the grievor or the grievor's representative. The classification that is recommended to the deputy head or delegate must be equitable and consistent with the Treasury Board classification policy instruments, including the relevant job evaluation standard.

[48] The parties agree that the content of the duty of procedural fairness owed to a grievor in a classification grievance is at the lower end of the spectrum (*Kohlenberg* at para 16; *Fischer* at para 25). The Applicant submits, however, that the rejection of the Grievance at the initial examination stage pursuant to section 2.1 of Appendix B breached his right to procedural fairness. He states that the basis of the rejection, the exclusion of classification comparators, is a complex relativity matter that should have been referred to a classification grievance committee. He argues that the initial examination of a grievance is confined to a cursory review of the grievance form. In the Applicant's view, he should have been afforded the opportunity to present a full case to the committee prior to any denial of the Grievance.

[49] It appears that the content of the procedural fairness owed to a grievor in the initial examination of a classification grievance has not been considered by this Court. While I do not agree with the Applicant that the initial examination must be restricted to a cursory review of the grievance form alone, the examination must be limited in scope for two reasons. First, a grievor is not entitled to make submissions or request an oral hearing at this stage of the process. Second, the provisions in Appendix B establishing the classification grievance committee indicate that matters of complexity regarding the appropriate classification for the grieved position are reserved for consideration by the Committee.

[50] As I have stated, the IRB rejected the Grievance primarily because it was untimely. Ms Wyant's July 20, 2017 letter to the Applicant is unequivocal in this regard. She confirmed in her September 11, 2017 letter that "your time limit to submit a classification grievance has expired". In the Decision, Ms Wyant stated:

> The classification grievance responses sent out in July 2017 clearly explained that the grievances were rejected because they were untimely, taking into consideration that the last classification decision dates back to 2006. I understand, from the material you submitted, that you do not disagree with this aspect.

[51] Ms Wyant went on to consider the issue of using the IRB GIC positions as comparators for the ID Member positions. The Applicant argues that the Decision was based on Ms Wyant's conclusion that the IRB was unable to do so. In my view, the Applicant's argument disregards the statement in the Decision that the Grievance was rejected as untimely.

[52] In concluding that the primary reason for the rejection of the Grievance was lack of timeliness, I am not ignoring Ms Wyant's statements in the Decision addressing the Applicant's arguments regarding classification inequity between the GIC and ID Member positions. However, limitation periods for the submission of grievances are mandatory or prescriptive requirements. Timeliness issues are determinative of the acceptance of a grievance for substantive consideration. If a grievance is not presented in a timely manner, a review of the merits of the grievance is not undertaken. In the present case, the IRB determined that the Grievance was not submitted in accordance with section 1.3.1 of Appendix B to the Directive. Ms Wyant's further commentary, in response to a long-running course of correspondence with the Applicant, confirmed the IRB's position regarding classification comparators for the ID

Member position. She did not undertake a full classification exercise or delve into the complex issue of relativity.

[53] In my view, issues regarding the timeliness of a classification grievance are properly subject to initial examination as they do not involve complex analyses. The Applicant acknowledges this fact in his Memorandum:

> 45. The employer's first look at a grievance occurs at the "initial examination". The employer conducts a cursory review of the grievance form. They may reject the grievance if there is an obvious deficiency which renders the grievance invalid. For example, a late grievance may be rejected because it was received after the required deadline.

[54] The 35-day limitation period in section 1.3.1 of Appendix B of the Directive must be met by a grievor. The fact that the Grievance was not timely was fatal. I find that the Applicant's right to procedural fairness was not breached by the rejection of the Grievance on initial examination due to non-compliance with section 1.3.1.

VII. Conclusion

[55] The application is dismissed.

[56] Each of the parties requested costs in their written submissions. Upon consideration of the factors listed in Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, costs in the fixed lump sum of $1,000 (inclusive of disbursements and taxes, if any) shall be payable forthwith by the Applicant to the Respondent.

JUDGMENT in T-330-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. Costs are awarded in the lump sum of $1,000 (inclusive of disbursements and taxes, if any), to be paid forthwith by the Applicant to the Respondent.

"Elizabeth Walker"
Judge

ANNEX A

Treasury Board Policy on Classification (*effective July 1, 2015*)

3. Context

3.2 The Treasury Board, in its capacity as employer, has broad responsibilities for people management and leadership excellence, including supporting the associated infrastructure and ensuring an appropriate degree of consistency in people management across the CPA. The Classification Program is an integral component of the broader CPA people management agenda, namely as it contributes directly to well managed organizations.

3.9 Additional mandatory requirements are set out in the following documents:

- *Directive on Classification*;
- *Directive on Classification Grievances*;

[…]

5. Policy statement

5.1 Objective

This policy:

5.1.1 Supports the equitable, consistent and effective establishment of the relative value of work in the CPA and ensure[s] that jobs are classified appropriately, in accordance with the relevant occupational group definitions and job evaluation standards (classification standards).

Appendix A – Definitions - classification grievance

A written complaint by an employee against the classification of the work assigned by the responsible manager to the position the grievor occupies and described in the job description. A classification grievance does not involve issues related to the job content or effective date of the job description.

Treasury Board Directive on Classification Grievances
(*effective July 1, 2015*)

3. Context

3.2 A classification grievance process is an essential component of effective people management. This directive supports the *Policy on Classification* with respect to classification grievances, including those for EX positions. It identifies mandatory requirements; outlines roles and responsibilities; and details the procedure for presenting, processing and resolving classification grievances.

[…]

5. Directive statement

5.1 Objective

5.1.1 This directive supports the establishment of a consistent and equitable recourse process for employees who wish to grieve the classification of the work assigned by the responsible manager and described in the job description of the position they occupy.

Appendix B: Classification Grievance Procedure

1. General information

1.3 Circumstances justifying the presentation of a classification grievance and time limits

1.3.1 A classification grievance must be presented by an employee no later than 35 calendar days after the day on which the employee receives notification or, when the employee has not receive such notification, no later than 35 calendar days after the day on which he or she first becomes aware of an action or circumstance affecting the classification of the position he or she occupies.

2. Initial examination of a classification grievance

2.1 All grievances must be examined upon receipt. When a classification grievance is rejected, the deputy head or delegate will issue the decision and respond to the grievor accordingly.

3. Classification Grievance Committee

3.1 Mandate

The Classification Grievance Committee is responsible for establishing the appropriate classification of the grieved position based on the work assigned by the responsible manager and described in the job description, and the additional information provided by management and the grievor or the grievor's representative. The classification that is recommended to the

deputy head or delegate must be equitable and consistent with the Treasury Board classification policy instruments, including the relevant job evaluation standard.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-330-18
STYLE OF CAUSE:	HARRY DENIS ADAMIDIS v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	OCTOBER 1, 2018
JUDGMENT AND REASONS:	WALKER J.
DATED:	MARCH 18, 2019

APPEARANCES:

Harry Denis Adamidis	FOR THE APPLICANT (ON HIS OWN BEHALF)
Zorica Guzina	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT