

IN THE MATTER OF AN ARBITRATION  
BETWEEN: MOHAWK COLLEGE

AND: ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF GRIEVANCE OF : JODI FORMOSI  
OPSEU 93D952 (A)

BOARD OF ARBITRATION: Kevin M. Burkett - Chairperson  
Jon McManus - Union Nominee  
George Metcalfe - Employer Nominee

APPEARANCES FOR  
THE COLLEGE: Janice A. Baker - Counsel  
Zaki Ullah - Acting Director,  
Human Resources  
Ed Babinski - Chair, Language  
Studies  
Steve Evans - Manager, Employee  
relations

APPEARANCES FOR  
THE UNION: Suzanne Lopez - Counsel  
Bob Pando - Union Local President  
Jodi Formosi - Grievor

A hearing in this matter was held in Hamilton, Ontario on  
February 17, 1994

## A W A R D

1. We have before us a grievance filed by Ms. Jodi Formosi, sessional instructor, dated January 5, 1993, which reads as follows:

### STATEMENT OF GRIEVANCE

I grieve specifically but not exclusively that a sessional position in the language studies Department was continued beyond one academic year (Fall 91, Winter 92, Fall 92) & therefore that position should have rolled over (Article 2:03 A & C). Consequently, since I was hired to fill that excess full-time teaching load in fall "92", my college employment status and compensation should be reflective of that position.

### SETTLEMENT DESIRED

1. Reclassify me as a professor in the full-time bargaining unit as of Sept. 1, 1992.
2. Compensate me at the appropriate pay level as of Sept. 1, 1992 with the accruing benefits, probation time and seniority.

"Jodi Formosi"

The Union wrote to the employer February 15, 1994, two days before the hearing clarifying the issues as follows:

Ms. Janice Baker  
Hicks Morley Hamilton  
30th floor,  
Toronto-Dominion Bank Tower  
Toronto, Ontario

Dear Ms. Baker:

RE: OPSEU v. Mohawk College (A)  
Local 240  
A/Grv. of FORMOSI, Judy  
Sessional Work  
Grievance dated January 5, 1993  
OPSEU # 93D952 / Our File # 15-4176-001

I am in receipt of the documents regarding the terms of appointment for sessional faculty. I look forward to receiving the remaining documents which I requested in my letter to you dated February 9, 1994 concerning regular full-time and partial-load faculty.

Thank you for advising me of the preliminary objection you will be raising on behalf of the College. To assist you in your preparation for the hearing, this is to let you know that the Union will be taking the position that the grievor should have been classified as regular full-time faculty either on September 1, 1992, as a result of her filling a vacancy in the Language Studies Department, or on January 1, 1993, by operation of the 12 month in 24 month rule as provided for in the collective agreement.

Yours truly,  
CORNISH ADVOCATES  
"Suzanne Lopez"

3. The College objects to our jurisdiction to deal with the Union claim that Ms. Formosi should have obtained regular full-time status as a result of filling vacancy as a sessional in the Language Studies Department on or about January 1, 1993, and thereby spending twelve months as a sessional within a 24 month period. The College submits that this is a fresh matter not raised by the grievance so that even if the grievor was a bargaining unit employee with an enforceable claim (which it disputes) we have no jurisdiction. The Union, while acknowledging that there is nothing on the face of the grievance referring to the January 1, 1993 vacancy, relies on the words "not exclusively" in the grievance statement. The Union argues that we have the jurisdiction because it's claim in respect of the January 1, 1993 vacancy relates to the grievor's status, as does the claim in respect of the September 1992 assignment, and because it also involves alleged employer manipulation of teaching assignments in order to defeat the grievor's entitlement to regular full-time status.

We made an oral ruling at the hearing finding that the claim in respect of the January 1993 vacancy was a fresh claim not encompassed by the grievance and, therefore, we had no jurisdiction to entertain it. We ruled as follows:

"Whereas a grievance is to be given an expansive reading with the objective of dealing with the issued raised in the broadest sense, a party cannot expand a grievance to the extent of raising a fresh cause of action not raised or referred to in the grievance.

In the case at hand the grievance refers to the September 1992 assignment. There is no mention of the January 1993 vacancy. Whereas the claim in respect of the January 1993 vacancy relates to the grievor's employment status and encompass an allegation of employer manipulation it nevertheless constitutes a separate and distinct cause of action unrelated in any way to the September 1992 cause of action. The use of the words "but not exclusively", in framing the grievance, do not allow the Union to raise unrelated allegations of similar type breaches of the collective agreement but rather permit the September 1992 matter to be dealt with in a broad and expansive manner.

Having regard to all of the foregoing we find that we are without jurisdiction to entertain the claim in respect of the January 11, 1993 vacancy".

5. We hereby confirm our oral ruling.

6. The College raised a second preliminary objection going to our jurisdiction to hear the claim in respect of the September 1992 teaching assignment. The essence of the College's objection is that under Article 1.01 of the collective agreement the grievor, as a sessional employee at the relevant time, was not an employee within the bargaining unit with the right to grieve. Furthermore, it is argued that even assuming that a vacancy existed, Article 2.03(c) stipulates that the position designated as regular full-time must be filled by a member of the bargaining unit and, therefore, could not be awarded to the grievor in any event. The College asks us to find that because Ms. Formosi was a non-bargaining unit sessional instructor at the time she has no entitlement. In support of its position the College relies upon:

Lambton College and OPSEU - Grievance re Wages  
Sessional Employees August 28, 1989 (Unreported) (H. D.  
Brown)

Fanshawe College and OPSEU - Union Grievance  
Grievance of B. MacDiarmid February 27, 1993  
(Unreported) (H. D. Brown)

Cambrian College and OPSEU - Grievances of Anderson  
/Poupore/Suosalo/Ashick/Potvin June 30, 1988  
(Unreported) (H. D. Brown)

The Union argues that although sessional employees are no members of the bargaining unit they have enforceable rights under the collective agreement. The Union reads Article 2.03 as protecting sessionals from manipulation of assignments designed to prevent them from attaining regular full-time status. In support of its position the Union relies upon:

Algonquin College and OPSEU - Grievance of P. Hanbury October 30, 1984 (Unreported) (D. H. Kates)

Loyalist College and OPSEU - Grievance of S. Daniels February 7, 198~ (Unreported) (R. J. Delisle)

The Union submits that given the purpose of Article 2.03 Ms. Formosi has the right to grieve under Article 32.

7. We made an oral ruling at the hearing, with the Union nominee dissenting, upholding the employer's objection, as follows:

"Consistent with the three awards of Arbitrator Howard Brown relied upon by the employer the majority finds that sessionals are not employees covered by the collective agreement, (even though there are provisions of the collective agreement pertaining to the assignment of sessionals) and, therefore, absent any language in Article 32 giving a sessional the right to grieve the enforcement of these clauses it must be found that no such right exists. The extension of grievance rights in Article 32.01 to an "employee who has been employed continuously for at least the preceding four months" must be read as applying to employees within the bargaining unit. Furthermore, in Article 2.03(c) the parties have put their minds to what is to happen in the event the college continues a full-time position beyond one full academic year. The college is required to designate the position as a regular full-time bargaining unit position "and shall fill the position with a member of the bargaining unit..." It is not disputed that the grievor was not a member of the bargaining unit at the relevant time. Accordingly, even if she did have the right to grieve, which she did not, there is no entitlement and could be no remedy flowing to the grievor. This is not to say that the Union could not grieve a breach of Article 2.03 if it felt that the integrity of the bargaining unit was threatened (a Union grievance has been filed) or that a bargaining unit employee with a claim to one of these positions could not grieve.

Having regard to all of the foregoing these proceedings are terminated.

8. We hereby confirm the oral ruling as set-out above and terminate these proceedings.

DATED at Toronto on the 00 of March,

I Dissent from 2nd ruling

"Jon McManus"  
Jon McManus

I Concur

"George Metcalfe"  
George Metcalfe