

Concerning an arbitration

L242  
87C41

Between:

NIAGARA COLLEGE (A)

and

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Grievance of T. Hales, salary level, 87C41

Board of Arbitration

J. W. Samuels, Chairman  
A. S. Merritt, College Nominee  
I. Freedman, Union Nominee

For the Parties

College  
C. G. Riggs, Counsel  
G. Pevere, Director of Personnel  
J. Balasak, Personnel Officer  
Dr. A. Knowles

Union  
R. E. Stoykewych, Counsel  
J. Hastings, Local President  
D. Orr, Steward  
T. Hales, Grievor

Hearing in St. Catharines, March 9, 1988

Tom Hales has been a teaching master at Niagara College since 1978. Before that, he worked fourteen years for the CNR and had earned his papers as a journeyman machinist after a five-year apprenticeship, which involved 10000 hours of practical experience and 746 hours of classroom time. When he came to the College, his level on the salary scale was based on his years of work experience, but no credit was given to him for his qualifications as a journeyman. Several adjustments were made in his salary level over the years, but he has not been given full credit for his five-year apprenticeship. In November 1986, he grieved the College's failure to give him this credit, and he asks for compensation right back to his date of hire.

Article 3.02 of the collective agreement provides that the determination of starting salaries and progression within the salary scales shall be in accordance with the College's Classification Plans. The Classification Plans for Academic Employees provide for the calculation of starting salary according to credit given for experience (relevant teaching or relevant occupational), and relevant formal qualifications.

For "experience", the new teaching master is given 1 point per year for the first five years,  $2/3$  point per year for the next 9 years, and  $1/2$  point per year for the next 12 years.

With respect to "relevant formal qualifications", the Classifications Plans provide:

Formal qualifications are those which constitute the norm in institutions of post-secondary education in the Province of Ontario. Only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree, are recognized. For example, a graduate of a three-year technology program in a College would be given  $1\frac{1}{2}$  points for each of the three years, regardless of the length of time actually spent by the individual in obtaining the diploma.

No credit is to be given for a year of study in which there was significant duplication of other studies. Therefore only the highest qualification will be used in computation unless the

subject areas are from different disciplines and all relevant to the appointment.

- C.A.A.T. Diploma or Post-Secondary Certificate — per year (level) completed: 1½ points  
(Maximum of 4 years)
- University Degree: per year (level) completed: 1½ points  
(Maximum of 6 years)
- Formal integrated work/study program such as P. Eng., R.I.A., C.A., C.G.A., Certified Journeyman — per year (level) completed: 1½ points  
(Maximum of 5 years)  
(Note that years included herein are not also to be included under Factor A)

The minimum overall qualifications requirement is eight points. Thus, to calculate the starting level on the salary scale, the "experience" points are added to the "relevant formal qualifications" points (note that years included in the latter category are not counted in the former, in order to avoid double-counting), and then 8 is subtracted from this total to arrive at the starting position.

Now let's look at what was done in Mr. Hales' case.

When he came to the College in 1978, he was given credit for fourteen years' "experience" with CNR (5 points for the first five years, and 6 points for the next nine years, giving a total of 11 points). Subtracting the minimum 8 from his 11 points put him at Step 3 on the salary scale. He was given no credit for "relevant formal qualifications", because the Classification Plans say that "Formal qualifications are those which constitute the norm in institutions of post-secondary education in the Province of Ontario. Only full years of post-secondary education at successively higher levels, and leading to a diploma, professional accreditation or degree, are recognized". And though "certified journeyman" appears in the list of qualifications which follow, Mr. Hales' apprenticeship did not involve post-secondary education.

In our view, this initial placement was entirely appropriate. The Classification Plans are clear, "relevant formal qualifications" must involve "post-secondary education". There is no suggestion that some equivalent

education will do, nor that it will suffice to combine long work experience with a trades apprenticeship. The only type of formal education which is recognized is "post-secondary education".

In 1981, changes were made in the provincial *Apprenticeship and Tradesmen's Qualifications Act*, as a result of which Mr. Hales received a Certificate of Qualification as an Industrial Mechanic Millwright. Both parties agree, and they are correct, that this Certificate should make no difference to Mr. Hales' position on the salary scale at the College, because it does not represent any additional education. He should be in the same position after receiving the Certificate as he was before its receipt.

In 1981, a new collective agreement came into force with a Step 15 on the salary scale, which was to be the maximum salary for "3 year CAAT Diploma or General Pass University Degree or certified Journeyman holding equivalent qualifications". There was also a note to Step 15:

\*Step 15 equivalent qualifications for a certified journeyman or someone treated as such, shall mean the successful completion of five full year CAAT courses at the technologist level of which two are directly related to the individual's area of expertise, or the equivalent. The course of study leading to equivalent Step 15 qualification for certified journeyman, or someone treated as such, shall be approved in advance by the College.

When these new provisions came into effect, some of the teaching masters in the trades at the College (not including Mr. Hales) went to management and asked for an increase in their maximum salary to Step 15. The College agreed for some of the tradesmen. Mr. Hales then approached management and asked for a Step 15 maximum. In June 1982, after he provided a copy of his Certificate to the College, his maximum was moved to Step 15 (though he wasn't at maximum yet).

In 1986, shortly before he filed his grievance, Mr. Hales received word from the College that his salary level at the time was being adjusted up three steps, effective September 1, 1985. At our hearing, counsel for the College explained that the reasoning behind this adjustment was as follows--- because Mr. Hales' maximum was Step 15, and Step 15 maximum is given for *inter alia* a 3 year CAAT Diploma, Mr. Hales was now being given a notional

credit for formal qualifications equal to the credit for a 3 year CAAT Diploma, though Mr. Hales was not legally entitled to any credit for formal qualifications (as we have already explained above).

Counsel for the College argued that both the move to Step 15 maximum, and the three-level adjustment on the salary scale, were merely *ex gratia*, and not improvements to which the grievor is legally entitled under the collective agreement. However, the College has no intention of revoking these improvements.

In our view, Mr. Hales may in fact be entitled to the Step 15 maximum, because the collective agreement provides for Step 15 for a "certified Journeyman holding equivalent qualifications" (emphasis added). It may be argued that Mr. Hales has "equivalent qualifications".

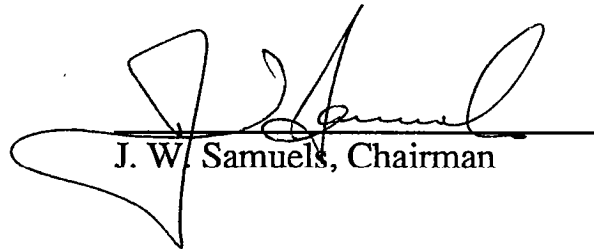
But his immediate position on the salary scale is determined according to the Classification Plans, and, as we have already said, the Classification Plans are clear that there is no credit for formal qualifications unless they are at the post-secondary level. There is no provision in the Classification Plans for the recognition of "equivalent qualifications". Thus, we agree with counsel for the College that Mr. Hales' move up three steps on the salary scale was *ex gratia*.


Mr. Hales and counsel for the Union expressed concern with the "unfairness" or "injustice" of Mr. Hales' situation, because it was said that other teaching masters in the trades have been more favorably treated than Mr. Hales. The sole basis for this sentiment appears to be some conversations Mr. Hales has had with colleagues concerning their salary levels. But we heard no concrete evidence concerning the treatment of others. As far as we are concerned, there is no evidence whatsoever of discriminatory treatment. Mr. Hales did not appear to have a real appreciation of how the Classification Plans work, and therefore it is unlikely that he would have been in a position to assess whether or not his colleagues were properly placed according to the Classification Plans. And this is critical. The Classification Plans govern placement on the salary scale. If Mr. Hales and the Union have some concern


with the justice of the Classification Plans (and we are not saying that they are "unjust" or "unfair" in any way whatsoever), then the appropriate remedy is to renegotiate the Plans.

For these reasons, the grievance is dismissed.

Done at London, Ontario, this 25<sup>th</sup> day of March, 1988.

  
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J. W. Samuels, Chairman

  
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A. S. Merritt, College Nominee

  
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