

**Date:** 20010921

**File:** 161-2-1195

**Citation:** 2001 PSSRB 96



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**CLAUDIO PELLICORE**

Complainant

and

**TREASURY BOARD**

Respondent

**RE:** Complaint under section 23 of the  
Public Service Staff Relations Act

**Before:** [Yvon Tarte, Chairperson.](#)

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(Decided without an oral hearing)

## DECISION

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[1] The complainant filed a complaint on May 10, 2001 (Board file 161-2-1195) in which he alleged the employer had failed to give effect to the decision of an adjudicator with respect to a grievance contrary to section 23(1)(c) of the *Public Service Staff Relations Act* (PSSRA).

[2] Section 23(1)(c) of the PSSRA provides as follows:

*23(1) The Board shall examine and inquire into any complaint made to it that the employer or an employee organization, or any person acting on behalf of the employer or employee organization, has failed*

...

*(c) to give effect to a decision of an adjudicator with respect to a grievance; or*

[3] On January 11, 2000 the Public Service Alliance of Canada (PSAC), the complainant's bargaining agent, referred a grievance to the Board for adjudication on behalf of the complainant. The grievance related to the entitlement of the complainant to the payment of overtime worked contiguous, before or after, his regular shift during the period from April 19-22, 1999. The PSAC and the employer agreed to have the grievance determined by means of an expedited adjudication process pursuant to a standing agreement they had entered into for that purpose.

[4] The standing expedited adjudication agreement provides in part, the following:

- 1. At the request of either party, a grievance that has been referred to adjudication may be dealt with through Expedited Adjudication with the consent of both parties.*
- 2. Future cases may be identified for this process by either party, subject to the consent of the parties.*
- 3. When the parties agree that a particular grievance will proceed through Expedited Adjudication, the (bargaining agent) will submit to the PSSRB the consent form signed by the grievor or the bargaining agent.*
- 4. The parties may proceed with or without an Agreed Statement of Facts. When the parties arrive at an Agreed Statement of Facts it will be submitted to the PSSRB or to the Adjudicator at the hearing.*
- 5. No witnesses will testify.*

6. *The Adjudicator will be appointed by the PSSRB from among its members who have had at least three years experience as a member of the Board.*
7. *Each Expedited Adjudication session will take place in Ottawa unless the parties and the PSSRB otherwise agree. The cases will be scheduled jointly by the parties and the PSSRB, and will appear on the PSSRB schedule.*
8. *The Adjudicator will make an oral determination at the hearing which will be recorded and initialed by the representatives of the parties. This will be confirmed in a written determination to be issued by the Adjudicator within five days of the hearing. The parties may, at the request of the Adjudicator, vary the above conditions in a particular case.*
9. *The Adjudicator's determination will be final and binding on all the parties, but will not constitute a precedent. The parties agree not to refer the determination to the Federal Court.*

[5] On May 19, 2000 the Board rendered an expedited adjudication decision allowing the grievance and the complainant's entitlement to overtime for the period of April 19-22, 1999. The complainant has acknowledged that he was fully compensated by the employer for his overtime claims for that period as required by the expedited adjudication decision. However, the problem as the complainant sees it is that there were similar situations subsequent to the April 19-22, 1999 period for which he was not compensated in accordance with the interpretation given to the collective agreement in the expedited adjudication decision.

[6] The position of the complainant is that the interpretation given to the collective agreement in the expedited adjudication decision, which is final and binding, should be applied to all similar subsequent situations with respect to him. The failure of the employer to do so places it in violation of section 23(1)(c) of the PSSRA.

[7] The employer on the other hand takes the position that decisions rendered under the expedited adjudication process are not precedent setting and, as such, are not binding on either party with respect to subsequent situations. Since the employer does not agree with the interpretation given to the collective agreement by the Board in the expedited adjudication decision, it is not prepared to apply that decision to a subsequent situation.

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Determination

[8] The grievance of the complainant referred to adjudication on January 11, 2000 was selected by the parties to be dealt with by way of the expedited adjudication process. In its decision of May 19, 2000, under that process, the Board essentially agreed with the grievor's interpretation of the collective agreement and upheld his grievance. The complainant has acknowledged that he has been fully compensated for the overtime claimed in that grievance, which covered the period from April 19-22, 1999. However, he now alleges that the employer is bound to apply the Board's interpretation expressed in that decision to all his subsequent requests for overtime and its failure to do so violates the provisions of section 23(1)(c) of the PSSRA.

[9] The purpose of an expedited adjudication process is to enable the parties to resolve certain grievances without the necessity of a formal adjudication hearing which is more costly and time consuming for both the parties and the Board.

[10] The agreement for expedited adjudication entered into by the PSAC and the employer provides that, at the request of either party, a grievance that has been referred to adjudication may be dealt with through expedited adjudication with the consent of both parties. The grievances the parties identify as appropriate for expedited adjudication are usually those where the facts are not in dispute and where a determination can be made on the basis of the documentation provided and the submissions of the parties.

[11] Since the expedited adjudication process is not as exhaustive and is less formal than a full adjudication hearing, the parties have agreed that the process is to be subject to certain conditions. One of those conditions is that, while the decision is final and binding on the parties, insofar as the specific issue contained in the grievance being determined is concerned, it will have no precedential value. In other words, neither party is bound to follow the decision in any subsequent situation that may be similar or even identical in nature. Should the decision not be followed in a subsequent case, the recourse of the employee is to present a new grievance which, if not resolved through the grievance process, may be referred to adjudication pursuant to section 92 of the PSSRA.

[12] In the instant case the employer has indicated that it does not agree with the interpretation given to the collective agreement in the expedited adjudication decision rendered by the Board. As indicated above, a decision rendered under the expedited adjudication process is not binding on either party in respect of any subsequent situation. Accordingly, there was no obligation on the employer to apply the expedited decision to the subsequent claims of the complainant. In the circumstances, the employer has not violated section 23(1)(c) of the PSSRA and the complaint is accordingly dismissed.

**Yvon Tarte,  
Chairperson**

OTTAWA, September 21, 2001.