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File: 166-2-30787

Citation: 2002 PSSRB 11



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

CLAUDIO G. PELLICORE

Grievor

and

TREASURY BOARD  
(Citizenship and Immigration Canada)

Employer



**Before:** Joseph W. Potter, Vice-Chairperson

**For the Grievor:** David Landry, Public Service Alliance of Canada

**For the Employer:** Jennifer Champagne, Counsel

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Heard at Toronto, November 29,  
and at Ottawa, December 21, 2001.



## DECISION

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[1] On November 21, 2000, Mr. Claudio G. Pellicore submitted a grievance, with seven attachments, concerning overtime compensation. He grieved management's interpretation of subclauses 28.06(c), 28.07(c) and 29.02(d) of the Program and Administrative Services collective agreement between the Treasury Board and the Public Service Alliance of Canada, expiring June 20, 2000 (but extended while being negotiated) (Exhibit G-3).

[2] As corrective action, Mr. Pellicore requests that he be compensated for all standby duty overtime.

[3] At the outset of the hearing, the grievor's representative stated that there was only one issue which was unresolved by the time the matter was referred to adjudication. At issue here is the interpretation of subclause 28.07(c). This subclause reads:

***28.07 Overtime Compensation on a day of rest***

*Subject to clause 28.04(a):*

...

(c) *when an employee is required to report for work and reports on a day of rest, the employee shall be paid the greater of:*

(i) *compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period,*

*or*

(ii) *compensation at the applicable overtime rate;*

...

[4] The uncontested evidence was put in through the grievor, and can be summarized as follows.

[5] The grievor was placed on standby commencing at 23:00 on November 3, 2000, and continued on standby until 15:00 on November 4, 2000. In effect, he had two eight-hour periods of standby.

[6] At 00:30 on November 4, 2000, the grievor received a telephone call at home and he worked for 30 minutes.

[7] The grievor claimed compensation for this work period under subclause 28.07(c)(i). He claimed three hours' pay at the rate of time and one-half.

[8] At 02:45, Mr. Pellicore was called at home again and had to go in to work. He worked until 11:30 hours and claimed compensation under subclause 28.07(c)(ii) for that period. It equated to seven and one-half hours at time and one-half, and double time for the remaining one and one-quarter hours of work.

[9] The total amount owing, according to the grievor, was 18.25 hours pay.

[10] When Mr. Pellicore put in his timesheet (Exhibit G-4) claiming the above, the grievor's supervisor rejected the claim stating that the compensation had to be claimed under either subclause 28.07(c)(i) or (ii), but not both. In this case, the employer considered that subclause 28.07(c)(ii) was the most beneficial to the grievor, therefore the employer stated it would compensate Mr. Pellicore under this provision only for all the hours he worked.

[11] Accordingly, the grievor amended his timesheet and claimed 14.75 hours as per his supervisor's instructions. This amount was arrived at by taking the first 7.5 hours worked and multiplying it by time and one-half, then taking the remaining 1.75 hours worked and multiplying it by double time. The grievor then submitted his grievance.

[12] What is at issue here is whether the grievor is entitled to 18.25 hours pay, as the grievor claims, or 14.75 hours pay, as the employer claims. The grievor stated his interpretation is the one that has been applied for a number of years.

### Arguments

#### For the Grievor

[13] The sole issue to be determined is the compensation owing to the grievor with respect to his periods of work, while on standby, on November 4, 2000. The grievor says he is owed a total of 18.25 hours' pay, and the employer says he is owed a total of 14.75 hours' pay.

[14] There is no dispute with respect to the facts. Mr. Pellicore worked the day shift on November 3, then commenced standby duties at 23:00 that evening. He received a telephone call, at his residence, at 00:30 hours and worked for one-half hour. The compensation he claimed for this was pursuant to subclause 28.07(c)(i).

[15] Mr. Pellicore was again required to work, while on standby, and did so from 02:45 until 11:30. The compensation he claimed for this was pursuant to subclause 28.07(c)(ii).

[16] The employer has denied the claim for compensation as submitted, and has told Mr. Pellicore that the claim had to be made under either subclause 28.07(c)(i) or (ii), whichever is the greater.

[17] Nowhere in subclause 28.07(c)(i) or (ii) is there language which prevents an employee from accessing (i) once and (ii) another time.

[18] The provision states that when an employee is required to report for work, and reports, the employee receives the greater of subclause 28.07(c)(i) or 28.07(c)(ii). This is exactly what Mr. Pellicore requested. The first time he reported, he asked for (i). The next time he reported, he asked for (ii). These requests are consistent with the collective agreement language.

[19] Mr. Landry submitted the following decisions in support of his argument: *Paul* (Board file 166-2-406) and *Barnard* (Board file 166-2-281).

#### For the Employer

[20] The collective agreement is clear and unambiguous, and must be interpreted according to its words. The words state that an employee receives three hours' pay, at overtime rates, up to a maximum of eight hours' compensation for each eight-hour period. It is either this compensation or overtime, whichever is the greater, that the grievor is entitled to.

[21] The grievor worked during his two eight-hour periods of standby. In both cases, the greater benefit is provided under subclause 28.07(c)(ii) so that is what he is entitled to. There is no provision for selecting 28.07(c)(i) on one occasion, then selecting 28.07(c)(ii) on another occasion.

[22] If the intent of the collective agreement were to allow an employee to opt for the greater of (c)(i) or (c)(ii) for each reporting, the agreement would say so. The only interpretation that makes sense is to total the hours worked by the employee, then calculate which provision is greater.

[23] The employee can only be paid appropriately once the total eight-hour period is reviewed.

[24] In *Doyon v. Public Service Staff Relations Board and The Queen*, [1978] 1 F.C. 31, at page 34, the Federal Court of Appeal stated:

...

*If a contract is clear, one cannot attempt to give it a meaning other than its apparent meaning by establishing that the parties intended to say something other than what they said....*

...

[25] Counsel for the employer submitted the following decisions in support of her argument: *Comeau*, 2001 PSSRB 112 (166-2-30313), *Gagnon* (Board files 166-18-17832 to 17834) and *Regina v. Barber et al.*, 68 D.L.R. (2d) 682 (Ont. C.A.).

### Rebuttal

[26] The collective agreement does not say the calculation is to be made at the end of eight hours, but rather it says it is to be done when the employee reports.

### Reasons for Decision

[27] The issue that must be determined here is the interpretation of subclause 28.07(c) of the Program and Administrative Services collective agreement. The facts of the case are not in dispute insofar as the time the grievor testified he worked on November 4, 2000.

[28] At 00:30 on November 4, 2000, the grievor, while on standby, received a telephone call at his home that required him to spend some 30 minutes working. For this period, he requested compensation under the provision of subclause 28.07(c)(i), which was three hours' pay at the applicable overtime rate. If the grievor had not been

required to work any more while on his first of two eight-hour standby shifts, there would be no dispute he was entitled to claim this benefit.

[29] However, what complicated the matter for the employer was the fact the grievor was again called to work and did work for another eight hours and 45 minutes. This, the employer said, meant the grievor had to choose either subclause 28.07(c)(i) or (ii), whichever provided for the greater entitlement.

[30] The clause is constructed such that the condition required to trigger the benefit is clearly stated at the outset, namely:

(c) *when an employee is required to report for work and reports on a day of rest, the employee shall be paid the greater of:*

...

[31] It seems to me the provision is clear. When the employee is required to report for work, the employee claims either the provision of subclause 28.07(c)(i) or 28.07(c)(ii). In the instant case, the grievor was required to report for work at 00:30 on November 4, 2000, and was, therefore, entitled to claim the benefit of either (i) or (ii), whichever is greater. In this case, subclause 28.07(c)(i) provides for the greater entitlement.

[32] The employee was also required to report to work commencing at 02:30 on November 4, 2000. He is, in my view, entitled to claim the provision of either (i) or (ii), whichever is the greater, as he met the condition precedent set out at the outset of subclause 28.07(c), namely, he was required to report for work and reported. This time the benefit of (ii) was greater, therefore he claimed it.

[33] In my opinion, for the employer's view of subclause 28.07(c) to prevail, there would have to be an express provision at the outset specifying either (i) or (ii) applies for any eight consecutive hours of standby. This is not contained at the outset of subclause 28.07(c).

[34] In this particular case, the grievor was required to report for work twice while on standby. Each time he reported he was entitled to be compensated according to the provision of the collective agreement. The provision specifies what he is entitled to

claim when he reports. There is no provision, in my opinion, that allows the employer to combine the entitlement for a number of different reporting times.

[35] Accordingly, Mr. Pellicore's grievance is sustained to the extent that he is entitled to be paid as per his original claim of overtime, which represented a total amount owing to him of 18.25 hours of pay.

**Joseph W. Potter,  
Vice-Chairperson**

OTTAWA, January 28, 2002.