

Date: 20021016

File: 166-2-30915

Citation: 2002 PSSRB 92



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

RENEL LAGACÉ

Grievor

and

**TREASURY BOARD
(Environment Canada)**

Employer

Before: Marguerite-Marie Galipeau, Deputy Chairperson

(Decided without a hearing.)



DECISION

[1] This decision concerns the referral of the following grievance by Renel Lagacé ("the grievor"), EG-6, Meteorology Section, Environment Canada, to adjudication:

[TRANSLATION]

I contest the decision of the employer who is refusing to pay me the premium rate of time and one-half for the September 29, 2000 and October 5, 2000 shifts.

The employer's final decision was communicated to me on March 12, 2001. I consider that the employer is in breach of clause 25.08 of my collective agreement.

Corrective action requested

I request that the premium provided for in clause 25.08 of my collective agreement be paid to me retroactively.

[2] On October 1, 2002, counsel for the employer advised the Board that the employer would not appear at the hearing scheduled for October 11, 2002, and that it was allowing the grievance:

[TRANSLATION]

***Subject: Reference to adjudication -
Renel Lagacé (166-2-30915)***

This is in relation to the above-referenced case set down for hearing at Montréal on October 11, 2002.

The employer wishes to advise the Board that it will allow the grievance. Therefore, as requested on Mr. Lagacé's grievance form, the employer will pay the premium rate of time and one-half (1½) for the shifts worked on September 29, 2000, and October 5, 2000, as provided for in clause 25.08 of the collective agreement for the Technical Services Group.

Consequently, the employer will present no evidence on the merits of the grievance and will not appear at the hearing on October 11.

[3] With the agreement of the bargaining agent, this case is decided without a hearing on the basis of the file.

Decision

[4] The burden of proof in this case lay with the bargaining agent and the grievor, since it involved a question of the interpretation of the collective agreement.

[5] In the instant case, the grievor is excused from leading evidence since the effect of the employer's letter of October 1, 2002, in which the latter allowed the grievance, is to concede the merits of the grievor's grievance. This letter excuses the grievor from adducing evidence since the employer states that the grievance is allowed and the premium claimed by Mr. Lagacé, which the employer agrees to pay to him, will be paid to him [TRANSLATION] "as provided for in clause 25.08 of the collective agreement for the Technical Services Group."

[6] These words constitute both an implicit admission that the employer's refusal to pay the premium to the grievor was in breach of the collective agreement and an explicit admission that the grievor's right to receive the premium he requested derives from clause 25.08 of the collective agreement for the Technical Services Group.

[7] Consequently, the grievor is excused from presenting any evidence, I allow the grievance and it is ordered that the employer pay the premium rate of time and one-half for the shifts worked on September 29, 2000, and October 5, 2000, as provided for in clause 25.08 of the collective agreement for the Technical Services Group, the whole in accordance with the employer's stated intention to do so in its letter of October 1, 2002. I am retaining jurisdiction until this order has been executed.

**Marguerite-Marie Galipeau,
Deputy Chairperson**

OTTAWA, October 16, 2002

P.S.S.R.B. Translation