

**Date:** 20051107

**File:** 166-2-35559

**Citation:** 2005 PSLRB 156



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**BETHANY HOPPER**

Grievor

and

**TREASURY BOARD  
(Department of Fisheries and Oceans)**

Employer

***EXPEDITED ADJUDICATION DECISION***

***Before:***        [Yvon Tarte, adjudicator](#)

***For the Grievor:***        Cécile La Bissonnière, Public Service Alliance of Canada

***For the Employer:***        [Eric Daoust, Treasury Board Secretariat](#)

**Note:**        The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

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[Heard at Saint-Sauveur, Quebec,  
October 18, 2005.](#)

## **REASONS FOR DECISION**

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[1] This grievance concerns the interpretation of the Operational Services collective agreement. The parties filed the following Agreed Statement of Facts:

1. *Mr. Hopper is currently an employee of the Department of Fisheries and Oceans as a Leading Seaman (SC-DED-03) at the Kitsilano Coast Guard Base in Vancouver, BC. Mr. Hopper works a 42-hour workweek.*
2. *The relevant collective agreement in this matter is the Operational Services collective agreement signed on November 19, 2001, with the expiry date of August 4, 2003, which covers the SC group.*
3. *On March 31, 2000, Mr. Hopper carried over 179.40 hours (21.35 days) of annual leave.*
4. *As of April 1, 2000, Mr. Hopper's credit for the vacation year 2000/01 was of 294.00 hours (35 days).*
5. *On March 31, 2001, Mr. Hopper carried over 128.60 hours (15.3 days).*
6. *As of April 1, 2001, Mr. Hopper's credit for the vacation year 2001/02 was of 299.86 hours (35.69 days).*
7. *Mr. Hopper did not take any annual leave for the vacation year 2001/02, therefore had a balance of 428.460 hours (51 days).*
8. *On March 31, 2002, Mr. Hopper was cashed out 134.459 hours, which equates to 16.007 days. Mr. Hopper carried over 294.001 hours or 35 days into the next vacation year.*

[2] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, this reference to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

[3] The collective agreement referred to in the Statement of Facts was signed by the parties on November 19, 2001. Clause 4.07 of the collective agreement dealing with vacation leave reads as follow:

**4.07 Carry-Over and/or Liquidation of Vacation Leave**

(a) *Where in any vacation year, an employee has not been granted all of the vacation leave credited to him or her, the unused portion of his or her vacation leave up to a maximum of thirty-five (35) days credits shall be carried over into the following vacation year. All vacation leave credits in excess of thirty-five (35) days shall be automatically paid in cash at his or her daily rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.*

(b)

- (i) *Notwithstanding paragraph (a), on the date of signing of this Agreement or on the date an employee becomes subject to this Agreement, he or she has more than thirty-five (35) days of unused vacation leave credits earned during previous years, this number of unused vacation leave credits shall become the employee's accumulated leave maximum;*
- (ii) *unused vacation leave credits equivalent to the employee's accumulated leave maximum shall be carried over into the following vacation year;*
- (iii) *unused vacation leave credits in excess of the employee's accumulated leave maximum shall be automatically paid in cash at his or her daily rate of pay as calculated from the classification prescribed in his or her certificate of appointment of his or her substantive position on the last day of the vacation year.*

[4] Clause 4.01 of the collective agreement defines "vacation year" as being the period "from April 1 to March 31 of the following calendar year inclusive".

[5] Pursuant to paragraph 4.07(b)(i) of the collective agreement, an employee may carry over more than 35 days of unused vacation leave credits only if that employee had to his credit more than 35 days of unused vacation leave credits earned during the previous year at the date of signing of the collective agreement.

[6] Given that the collective agreement was signed in November 2001, the previous year must refer to the year ending on March 31, 2000. At that time, the grievor did not

have more than 35 days of unused vacation leave credits. The employer was, therefore, correct in its interpretation of the collective agreement.

Order

[7] The grievance is denied.

November 7, 2005.

**Yvon Tarte,  
adjudicator**