

Date: 20051201

File: 166-02-30917

Citation: 2005 PSLRB 167



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

LOUIS CAUCHY

Grievor

and

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

Employer

EXPEDITED ADJUDICATION DECISION

Before: Sylvie Matteau, adjudicator

For the Grievor: C. La Bissonnière, Public Service Alliance of Canada

For the Employer: L. Bourgeois-Doré, Treasury Board

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.

Heard at Ottawa, Ontario,
November 25, 2005.
(P.S.L.R.B. Translation)

[1] Mr. Cauchy's grievance concerns the interpretation of a collective agreement in regard to the granting of overtime. The parties presented the following Agreed Statement of Facts:

[Translation]

1. *Louis Cauchy is an SC-ERD-03, Assistant Engineer (Ship's Crews), who has been working for Fisheries and Oceans Canada in Quebec City since April 1, 1995; he has always worked on the vessel Desgroseillers.*
2. *This grievance is subject to the collective agreement between the Treasury Board and the Public Service Alliance of Canada, which represents the Operational Services Group (all employees) signed on July 7, 2000 with an expiry date of August 4, 2000.*
3. *Louis Cauchy's work schedule is governed by Annex B of Appendix G of the Conventional Work System; it works out to eight hours a day and averages of 40 hours over a five-day week.*
4. *Since the Desgroseillers operates 24 hours a day, seven days a week, most of the employees work in shifts to cover all hours of operation. In the previous week, on January 13, 2001, Mr. Cauchy worked Monday to Friday, from 4 a.m. to 8 a.m. and from 4 p.m. to 8 p.m.*
5. *Louis Cauchy was scheduled to work from 4 a.m. to 8 a.m. on January 13, 2001.*
6. *At 8:45 p.m. on January 12, 2001, it was announced that the Desgroseillers would be leaving at 11:30 p.m. on a brief emergency mission.*
7. *At 1 a.m. on January 13 2001, realizing that the mission would take longer than expected, the Commander announced that the return time had become indefinite, and that all those concerned should be notified of the change.*
8. *At 1 a.m. on January 13, 2001, chief mechanic Yvan Coats, Mr. Cauchy's immediate supervisor, left a message on Mr. Cauchy's home answering machine informing him that he would not be needed for the 4 a.m. to 8 a.m. shift because the ship was still at sea, and that the return time was as yet undetermined.*
9. *At 3 a.m. on January 13, 2001, Louis Cauchy reported for work at the dock, but the ship had not yet returned.*

10. *At 8:55 a.m. on January 13, 2001, the ship returned.*
11. *Another employee worked that shift for Louis Cauchy.*
12. *The employee states that he was available for the hours on his schedule and that his duties were required because another employee had performed them.*
13. *The employer stipulates that since the emergency mission that started on January 12, 2001 at 11:30 p.m. looked like it was going to be a short one, Louis Cauchy was not contacted. Furthermore, the overtime included in Louis Cauchy's schedule for January 13, 2001 from 4 a.m. to 8 a.m. was cancelled and was not worked by Mr. Cauchy.*

[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] As the grievor acknowledged, on Friday, January 12, 2001 he had completed a 40-hour work week under his conventional work schedule. He was expected to report to work at 4 a.m. on Saturday morning. This fact therefore represented overtime for the grievor.

[4] However, since the ship remained at sea on an emergency mission, the employer notified the grievor at 11 p.m. that his presence would not be required. In so doing, it withdrew its request and approval of overtime. Thus, the grievor was notified ahead of time and did not work the overtime. He cannot claim payment for it.

[5] The collective agreement provisions on which the grievor is basing his claim do not apply to overtime. The employer was not under any obligation to ensure that he was given these hours of work, and the collective agreement does not contain any provision for payment of overtime that is not worked because of a decision by the employer, even if the employee reports to the dock at the scheduled time.

(The Order appears on the next page)

Order

[6] The grievance is dismissed.

December 1, 2005.

P.S.L.R.B. Translation

**Sylvie Matteau,
adjudicator**