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Public Service Staff Relations Act Before an adjudicator

BETWEEN

SUZANNE BRISSON AND HÉLÈNE DUBEAU

Grievors

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as
Brisson and Dubeau v. Canadian Food Inspection Agency

In the matter of grievances referred to adjudication pursuant to section 92 of the *Public Service Staff Relations Act*, R.S.C. (1985), c. P-35

REASONS FOR DECISION

Before: Sylvie Matteau, Adjudicator

For the Grievors: Glen Chochla, Public Service Alliance of Canada

For the Employer: Simon Kamel, Counsel

Heard at Montréal, Quebec,
March 30, 2005.

Grievances referred to adjudication

[1] The two grievors, Suzanne Brisson and Hélène Dubeau, are employees of the Canadian Food Inspection Agency (the Agency) in the Montréal region. They each filed a grievance at the first level of the applicable grievance process on January 13, 2003. They allege that the employer refused to pay them the $20 cash premium payment to which they are allegedly entitled under the collective agreement signed between the Agency and the Public Service Alliance of Canada on July 6, 2001, when the scheduled meal break is changed by more than one half-hour by the employer without advance notice.

[2] The collective agreement was adduced (Exhibit G-1). At the start of the hearing, the parties also adduced a joint statement of facts (Exhibit G-3). The grievors held to this evidence. The employer called a witness.

[3] It was agreed that, despite the reference to sub-clause 24.05(d) in the wording of the grievances, it is actually paragraph 24.04(b)(v) of the collective agreement that is at issue in these circumstances (paragraph 2 of the joint statement of facts).

[4] On April 1, 2005, the new *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*, I continue to be seized with these references to adjudication, which must be dealt with in accordance with the provisions of the former *Public Service Staff Relations Act*, R.S.C., (1985), c. P-35.

Summary of the evidence

[5] The joint statement of facts is as follows:

> [Translation]
>
> […]
>
> *The parties agree to the following facts.*
>
> *1. At the time that each grievance was filed, the complainants worked as Inspectors in the following classifications:*
>
> *(a) Suzanne Brisson: EG-02; and*
>
> *(b) Hélène Dubeau: EG-02.*

2. *Article 24.04(b)(v) applies to the complainants.*

3. *The applicable collective agreement is the one signed between the Canadian Food Inspection Agency and the Public Service Alliance of Canada on July 6, 2001, with an expiry date of December 31, 2002.*

4. *The name of each complainant is on a list of employees who voluntarily accepted to replace inspectors who are absent at other establishments. The employer may assign an employee when no one voluntarily accepts the assignment.*

5. *The employees work in establishments regulated by the CFIA and the hours of work are established to respect the needs of the industry.*

Suzanne Brisson

6. *Ms. Brisson's normal place of work is establishment #89 and her scheduled hours of work are from 7:00 a.m. to 3:30 p.m. with a meal break from 11:30 a.m. to 12:30 p.m.*

7. *On November 19, 2002, Ms. Brisson reported to her establishment (establishment #89), Volailles Giannonne inc. in St. Cuthbert, at her usual work time.*

6. *Towards the beginning of her work day on November 19, 2002, the employer asked Ms. Brisson to work at establishment #80 in Traham. She agreed and the employer authorized her to report to #80. The scheduled meal break at establishment #80 is from 12:15 p.m. to 1:00 p.m.*

Hélène Dubeau

7. *Ms. Dubeau's normal place of work is establishment #89 and her scheduled hours of work are from 7:00 a.m. to 3:30 p.m. with a meal break from 11:30 a.m. to 12:30 p.m.*

8. *On November 8, 2002, Ms. Dubeau reported to establishment #89 at Volailles Giannonne inc. in St. Cuthbert at her usual work time.*

9. *Towards the beginning of her work day on November 8, 2002, the employer asked Ms. Dubeau to work at establishment #80 in Traham. She agreed and the employer authorized her to report to #80. The scheduled meal break at establishment #80 is from 12:15 p.m. to 1:00 p.m.*

> *10. On November 22, 2002, Ms. Dubeau reported to establishment #89. Towards the beginning of her work day, the employer asked her to work at establishment #468 at Lucy Porc. She agreed and the employer authorized her to report to #468. The scheduled meal break at establishment #468 is from 12:15 p.m. to 12:45 p.m.*
>
> *11. Since each complainant was required to travel outside her headquarters area at the employer's request on each of the aforementioned dates, she was entitled to the meal allowance and the kilometrage stipulated in the Travel Directive, and to compensation for travel time as stipulated in article 33 of the collective agreement. The complainants agree that they received the applicable allowances as set out in the Travel Directive and for travel time.*
>
> *12. The complainants claim that the employer changed the scheduled meal break by more than half an hour and, by refusing to pay them a cash premium payment of $20 for each aforementioned day or work, violated clause 24.04(b)(v) of the collective agreement.*
>
> […]

[6] Clause 24.04 of the collective agreement reads as follows:

> *(a)* […] *the normal work week shall be thirty-seven and one-half (37 1/2) hours exclusive of lunch periods, comprising five (5) days of seven and one-half (7 1/2) hours each, Monday to Friday. The workday shall be scheduled to fall within an eight (8) hour period where the lunch period is one-half (1/2) hour or within an eight and one-half (8 1/2) hour period where the lunch period is more than one-half (1/2) hour and not more than one (1) hour. Such work periods shall be scheduled between the hours of six (6) a.m. and six (6) p.m. unless otherwise agreed in consultation with the Alliance and the Employer at the appropriate level.*
>
> *(b) For employees who are governed by clause 24.04(a) and who perform meat inspection duties, the Employer will make every reasonable effort to*
>
> *(i) avoid excessive fluctuation in hours of work;*
>
> *(ii) post hours of work schedules seven (7) days in advance;*
>
> *(iii) notify the employee(s) in writing of any changes to the scheduled hours of work.*

> *(iv) when the scheduled hours of work are changed by the Employer after the mid-point of the employee's previous work day or after the beginning of the employee's previous day meal break, whichever is earlier, the employee is entitled to a cash premium payment of twenty dollars ($20.00) in addition to regular daily pay.*
>
> *(v) when the scheduled meal break is changed by the Employer by more than one half an hour (1/2) after the mid-point of the employee's previous work day or after the beginning of the employee's previous day meal break, whichever is earlier, the employee is entitled to a cash premium payment of twenty dollars ($20.00) in addition to regular daily pay.*
>
> *(vi) total cash premium payment under clauses 24.04 (iv) and 24.04(v) shall not be more than twenty dollars ($20.00) per work day.*

[7] Bernard Vanier, inspection manager for the Montréal East region since 1998, testified. He explained that it is his duty to ensure that inspection personnel are present at all slaughterhouses in his sector. Inspection work is divided into two areas of activity: ante-mortem inspection and post-mortem inspection.

[8] He also explained that work schedules are established once a year. Virtually all slaughterhouses have different hours of operation. Indeed, among 50 establishments there would be 40 different work schedules. Each of these schedules is set based on the needs of each individual slaughterhouse and is confirmed in a service agreement signed between the establishment and the Agency.

[9] All employees have a permanent or regular place of work in a designated slaughterhouse. Since the Agency must guarantee inspection services, employees are frequently called on to change locations and to work at a moment's notice in another establishment. Mr. Vanier indicated that these assignments are common. Employees are asked to indicate their interest in such transfers and to place their names on a list of volunteers that is used on a rotating basis. In his opinion, between 15% and 25% of the employees in his region are "on transfer" every day in order to meet the immediate needs of the slaughterhouses based on the availability of inspectors and production volume.

[10] The employer pays the cash premium set out in paragraph 24.04(b)(v) of the collective agreement when the meal break at a slaughterhouse is changed by more than

one half-hour because of a mechanical failure or a delay in supply to the establishment caused, for example, by a snow storm.

Summary of arguments

[11] For the grievors, paragraph 24.04(b)(v) of the collective agreement is clear. Its purpose is to compensate employees when their meal break is changed by more than one half-hour without notice. Sub-clause 24.04(b) relates to the employee's schedule and not to the work schedule of the slaughterhouse as the employer claims. The same is true for sub-clauses 24.05(c) and (d), which have the same effect. As a result, the interpretation and application of these provisions must take into account the wording of article 24 (Hours of Work) in its entirety and reflect not only the wording but also the spirit of that article.

[12] The purpose of this provision is therefore to compensate employees for any inconvenience that changing their meal break might cause them if the change is more than one half-hour and it occurs without the established notice. It must be read from the employee's point of view.

[13] The grievors claim that paragraph (iv) of sub-clause 24.04(b) clearly specifies that these provisions relate to the employee's personal schedule. The provision states: "when the scheduled hours of work are changed by the Employer […]". Consequently, it can only be the same "scheduled hours of work" that are referred to in paragraph (v) following, since it is of the same nature.

[14] In support of their arguments, the grievors cite the decisions in *Re Brewers' Warehousing Provincial Board and Brewers' Warehousing Co. Ltd.* (1957), 7 L.A.C. 322; *Vaillancourt v. Canadian Food Inspection Agency*, 2004 PSSRB 44; *Re General Hospital Corp. and Newfoundland Association of Public Employees* (1992), 29 L.A.C. (4th) 298.

[15] According to the grievors, *Brewers' Warehousing Provincial Board (supra)* sets out the principle by which it is necessary to determine the reasonable basis of the provision to be applied. Employees are entitled to know in advance the hours of their meal break. They are entitled to stability in that break. If the break is changed without the established notice, they are entitled to a cash premium. It is clear that this is the intent of paragraph 24.04(b)(v) of the collective agreement and that it is the schedule of the affected employee that is at issue in this provision.

[16] In commenting on *Vaillancourt (supra)*, the grievors pointed out that it is a decision that, while not directly relevant, helps to understand the present collective agreement and its underlying principles. It is the same employer but a different group of employees, represented by a different bargaining agent. In *Vaillancourt (supra)*, the issue was to define the shift schedule and the employee's personal hours of work and to make the distinction between them. In the present circumstances, the cash premium should be paid because the purpose of paragraph 24.04(b)(v) is to compensate employees for a change in their individual hours of work, if proper notice has not been given.

[17] The decision in *General Hospital (supra)* refers to the decision of D.M. Beatty in *Re Steel Co. of Canada Ltd and United Steelworkers, Local 1005* (April 29, 1975), which states that:

> […]
>
> […] *the manifest purpose of art. 5.08(g) is to compensate an employee for the inconvenience that results when he is required to alter his personal affairs, and work on a day which since the Thursday of the preceding week, he had assumed was available for him to pursue his own interests. In a sense the payment of a premium rate in the circumstances set out in art. 5.08(g) is designed to compensate an employee who has reasonably relied on the posted schedules to arrange his personal affairs for the succeeding week and who subsequently is required to alter those arrangements.* […]
>
> […]

[18] The grievors pointed out that, in that case, the employee voluntarily agreed to change his schedule. Therefore, it is not because they volunteered for these assignments and accepted them that they are not entitled to the cash premium. Indeed, once they have accepted the assignment, they are required to report to work, as indicated by the employer. Moreover, in paragraph 4 of the joint statement of facts, it is recognized that "[…] The employer may assign an employee when no one voluntarily accepts the assignment."

[19] At the outset, the employer pointed out the special nature of the environment in which the grievors work. Their hours of work are dictated by the needs of the slaughterhouses. According to the employer, the collective agreement recognizes this

special situation. It grants a cash premium in exceptional circumstances, outside the control of the employer or the slaughterhouse. Paragraph 24-04(b)(v) is clear.

[20] By making a commitment to minimize, through reasonable effort, excessive fluctuation in hours of work and to post work schedules seven days in advance, as well as to inform employees in writing of any changes to the scheduled hours of work, the collective agreement recognizes that flexibility is required in this special work environment.

[21] The general intent of clause 24.04 of the collective agreement is therefore that, if the meal break is changed without advance notice in a slaughterhouse for some reason, the cash premium will be paid. However, this provision does not apply in cases of a transfer from one establishment to another, unless the meal break is changed at that establishment.

[22] Other provisions apply in the circumstances of a transfer, mainly those in the Travel Directive, which is an integral part of the collective agreement.

[23] The employer does not argue the fact that, if it changes the meal break at a slaughterhouse without giving advance notice, it must pay the cash premium. If, however, it is the employee who changes establishments and it has a different meal break from the one set out at his or her regular establishment, this situation does not constitute a change in the meal break as set out by paragraph 24.04 (b)(v) of the collective agreement.

[24] As for the interpretation of *Vaillancourt (supra)* by the grievors, they are assigning arguments to the employer that are not correct. This case is very different.

[25] Although there are similar facts in *Vaillancourt (supra)*, notably due to the fact that the employee was required to report to work at another establishment, the issue to be resolved in that case was the correct, specific terminology of the clause in question. That clause stipulated that: "**B2.07** If an employee is given less than seven days advance notice of a change in their shift schedule […]". Nevertheless, the decision contains possible solutions and principles that can be transposed to the case before us now, among them, the principle that the situation should be examined in its context.

[26] What the grievors are seeking in this instance is the application of a provision that applies to an unplanned event in a slaughterhouse, an exceptional measure, to a transfer situation. That is not the intended purpose of this provision.

[27] In support of its argument, the employer referred to the decision in *Brouillet et al. v. Treasury Board (Agriculture Canada)*, PSSRB file nos. 166-2-17277 to 17279 (1988) (QL). In its view, this decision contains the raison d'être of paragraph 24.04(b)(v). The decision precedes the adoption of a clause such as that in paragraph 24.04(b)(v). The adjudicator concluded in that instance that a change in a meal break did not constitute a change in the hours of work.

[28] The decisions in *Ilkanic v. Treasury Board (Employment and Immigration Commission*), PSSRB file no. 166-2-14259 (1984) (QL) and *Hornby v. Treasury Board (Agriculture Canada)*, PSSRB file no. 166-2-17110 (1988) (QL) were also cited in support of the employer's argument. The latter file contains the principle by which it is not possible to mix the schedule of one establishment with that of another. As a result, for any employee, the meal break is the break posted at the establishment to which he or she is assigned, even temporarily.

[29] Finally, it is necessary to take into account, first, the fact that the employees volunteered for these transfers and second, the schedules are posted in advance in all slaughterhouses. The employees know the schedules from one establishment to another. Moreover, a travel allowance is paid for transfers. Thus, it is important to avoid double compensation. Such a situation would be contrary to clause 1.02 of the collective agreement, which states:

> ***1.02*** *The parties to this Agreement share a desire to improve the Canadian Food Inspection Agency and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and efficiently served. Accordingly, they are determined to establish, within the framework provided by law, an effective working relationship at all levels of the Agency in which members of the bargaining unit are employed.*

[30] Paying a $20 cash premium, other than in exceptional circumstances due to a production delay or problem, would be contrary to effective management. Moving from one slaughterhouse to another does not constitute the type of change to the schedule covered by paragraph 24.04(b)(v) of the collective agreement.

[31] In reply, the grievors argued that, if the intent of the parties was to cover the slaughterhouse's schedule and not the individual schedule of the employee, the parties would have specified it, as was done in *Vaillancourt (supra)* by referring to the "shift schedule". As for the payment of travel expenses and the application of the Travel Directive with respect thereto, it is not relevant in the circumstances.

[32] Finally, clause 1.02 supports the interpretation of the collective agreement in favour of the grievors because it refers to the general intent of the collective agreement and the $20 cash premium must therefore be considered as a means of increasing efficiency. It penalizes the employer when it changes the employee's schedule contrary to the principle of stability set out in paragraph 24.04(b)(i) and compensates the employee in the same circumstances for the inconvenience thereby created unilaterally by the employer. Indeed, its raison d'être is to ensure that the employer has enough inspectors to meet its obligations to the various slaughterhouses. The employer has sole control of these resources.

Reasons

[33] The issue to be decided is the following: does paragraph 24.04(b)(v) of the collective agreement apply when the grievors' meal break is changed by more than one half-hour, without advance notice, when the change is due to the fact that the grievors were required to report to work at a slaughterhouse other than the one where they normally work? I must reply in the affirmative.

[34] The paragraph in question must be read and interpreted in the context and general intent of the clause of which it is part and the spirit of the article of the collective agreement to which it belongs. In this sense, the purpose of this clause is to ensure the stability and predictability of the employee's meal break. This clause must be interpreted from the point of view of the impact of any event on the employee's regular time for meal break. The collective agreement does not provide, moreover, for a specific event that might change the time of the meal break.

[35] The parties agreed that the clause was clear. The adjudicator, when dealing with a clear clause, cannot add terms that might have the effect of expanding or diminishing the clause's scope. Paragraph 24.04(b)(v) clearly refers to the employee's schedule and does not contain the words "except in the case of a transfer":

> *(v) when the scheduled meal break is changed by the Employer by more than one half an hour (1/2) after the mid-point of the employee's previous work day or after the beginning of the employee's previous day meal break, whichever is earlier, the employee is entitled to a cash premium payment of twenty dollars ($20.00) in addition to regular daily pay.*

[36] The parties each argued in their own favour my decision in *Vaillancourt (supra)*. In that file, there was specific reference to the shift schedule while, in the instant case, there is express reference to the employee's schedule.

[37] In support of its argument, the employer referred to the interpretation in *Brouillet (supra)* in 1988. That decision was rendered on the basis of a provision that corresponds to paragraph 24.04(b)(iv) of the present collective agreement and not to paragraph (v) currently at issue. At the time, there was no specific provision covering the time of the meal break. The employer even suggested that the decision in *Brouillet (supra)* was the source of the present provision. That interpretation cannot therefore apply to the new provision.

[38] The transfer of the grievors to a slaughterhouse where the time of the meal break is different had the effect of changing the meal break in their scheduled hours of work ("scheduled hours of work" (24.04(b)(iv)). In the event that, because of circumstances at the establishment to which they were transferred, the meal break was the same as the normal meal break at their regular establishment, they would then not be entitled to the cash premium in question because the meal break on their scheduled hours of work would not have been changed.

[39] The employer states that a temporary transfer from one establishment to another is common. Up to 25% of employees are on transfer every day. The bargaining agent and the employer could examine this issue in the appropriate forum, that is, during bargaining of the collective agreement.

[40] The employer also argues that the meal allowance, paid to the grievors pursuant to the Travel Directive, constitutes the appropriate compensation in the circumstances. Payment of a second meal allowance cannot be justified. This directive is an integral part of the collective agreement pursuant to article 64. Under the terms of the Directive, "[…] and to ensure that employees are not out-of-pocket. These provisions do not constitute income or other compensation that would open the way for personal

gain". The objective of paying the meal allowance is completely different from that of the cash premium set out in paragraph 24.04(b)(v) of the collective agreement. The purpose of the latter is to ensure the stability and predictability of the meal break established on each employee's scheduled hours of work. While recognizing the need for flexibility that the employer may require, it ensures that changes can be made to the meal break set on the schedule, provided that the employee is advised of the change in accordance with the collective agreement.

[41] Finally, there is a condition placed on payment of the cash premium. The employee must be advised "[…] after the mid-point of the employee's previous work day or after the beginning of the employee's previous day meal break, whichever is earlier […]". In the present circumstances, the grievors were informed of the change in their meal break the morning of their work day, when the employer asked them to report to another slaughterhouse.

[42] In the circumstances, and given the evidence adduced, I allow the grievances.

[43] For these reasons, I make the following order:

Order

[44] The grievances are allowed. The employer will pay to Ms. Brisson, for the day of November 19, 2002, and to Ms. Dubeau, for November 8 and 22, 2002, the cash premium payment of $20 per day set out in paragraph 24.04(b)(v) of the collective agreement.

April 22, 2005.

Sylvie Matteau,
Adjudicator

P.S.L.R.B. Translation