

Date: 20050603

File: 166-2-33992

Citation: 2005 PSLRB 48



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

TERRY ARMSTRONG

Grievor

and

**TREASURY BOARD
(Department of Transport)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, adjudicator](#)

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

For the Employer: [Eric Daoust](#)

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,
May 27, 2005.](#)

REASONS FOR DECISION

[1] This grievance which was referred to adjudication on March 10, 2004, is concerned with the interpretation of the “Hours of Work” provisions of the Technical Services collective agreement (expiry date: 21 June 2003) entered into between the Treasury Board and the Public Service Alliance of Canada.

[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*, I continue to be seized with this reference to adjudication, which 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 parties to this expedited adjudication have agreed on the following facts:

[1] Terry Armstrong is a full time indeterminate Technical Inspector, TI-06, working for Transport Canada, Security and Emergency Preparedness Branch located at Edmonton International Airport. Mr. Armstrong became a shift worker (working irregular hours) after 9-11.

[2] On June 20, 2002, the acting Security Manager, Bruce Comeau, notified his staff of a necessity to change the work schedules in order to accommodate additional security monitoring during the Edmonton Airport Air Show scheduled to take place the weekend of July 13 and 14, 2002.

[3] This e-mail notice indicated the names of the employees and the hours and days to be worked. It also indicated that days of rest still needed to be adjusted for three individuals, including the grievor.

[4] The grievor's schedule was amended and consequently worked on July 13 and 14, 2002. Due to the change to the schedule without the rescheduled days of rest, Mr. Armstrong worked from July 6, 2002 to July 19 inclusively.

[5] Mr. Armstrong requested overtime compensation (codes 261 & 262) for hours worked July 13th and 14th, 2002, however his request for overtime was denied.

[6] The day of rest for the other employees were re-scheduled and taken in late July and early August.

[7] The grievor did take days off during the month of July and August but took these days utilizing compensatory time off earned prior to the weekend of the Edmonton Air Show.

[8] Terry Armstrong filed his grievance on August 27, 2002, requesting that he be compensated for overtime worked during the weekend of the Edmonton Air Show.

[4] Article 25 of the collective agreement dealing with hours of work reads in part as follows:

25.08 If an employee is given less than seven (7) days' advance notice of a change in his or her shift schedule, the employee will receive a premium rate of time and one-half (1 1/2) for work performed on the first shift changed. Subsequent shifts worked on the new schedule shall be paid for at straight time. Such employee shall retain his or her previously scheduled days of rest next following the change or if worked, such days of rest shall be compensated in accordance with the overtime provisions of this collective agreement.

25.09 For employees who work on a rotating or irregular basis:

(a) Normal hours of work shall be scheduled so that employees work:

(i) an average of thirty-seven and one-half (37 ½) hours per week and an average of five (5) days per week,

and

(ii) seven and one-half (7 ½) hours per day.

...

(d) Every reasonable effort shall be made by the Employer:

(i) not to schedule the commencement of a shift within eight (8) hours of the completion of the employee's previous shift;

(ii) to avoid excessive fluctuations in hours of work;

(iii) to consider the wishes of the majority of employees concerned in the arrangement of shifts within a shift schedule;

- (iv) *to arrange shifts over a period of time not exceeding fifty-six (56) days and to post schedules at least fourteen (14) days in advance of the starting date of the new schedule;*
- (v) *to grant an employee a minimum of two (2) consecutive days of rest.*

...

[5] Article 28 of the collective agreement dealing with overtime reads in part as follows:

28.01 Each fifteen (15) minute period of overtime shall be compensated for at the following rates:

(a) time and one-half (1 1/2) except as provided for in paragraph 28.01(b);

(b) double (2) time for each hour of overtime worked after fifteen (15) hours' work in any twenty-four (24) hour period or after seven and one-half (7 1/2) hours' work on the employee's first (1st) day of rest, and for all hours worked on the second or subsequent day of rest. Second or subsequent day of rest means the second or subsequent day in an unbroken series of consecutive and contiguous calendar days of rest.

...

[6] Following a shift schedule change, the grievor was required to work for a period of 14 consecutive days from June 6 to June 19, 2002. Prior to this change, Mr. Armstrong was scheduled to be off work on Saturday and Sunday, July 13 and 14, 2002.

[7] The collective agreement imposes upon the employer an obligation to make every reasonable effort to grant an employee a minimum of two consecutive days of rest. The employer failed to do so in this case. Instead, the employer required that the grievor work at the air show on his scheduled days of rest on July 13 and 14. The employer's failure to deal promptly with the grievor's right to days of rest is unacceptable. The best way to correct the situation and make Mr. Armstrong whole, is to allow the grievance.

[8] The employer suggested that I order the grievor to pay back the shift premium given to Mr. Armstrong for his work on July 13 and 14, 2002, if I was inclined to allow the grievance. Article 27 of the collective agreement clearly states that a shift premium is payable to an employee who works shifts on a weekend including overtime hours. There is therefore no reason to order the return of the shift premium paid to Mr. Armstrong for his work on July 13 and 14, 2002.

[9] The grievance is therefore allowed.

**Yvon Tarte,
adjudicator**

OTTAWA, June 3, 2005.