

Date: 20050629

File: 166-2-32748

Citation: 2005 PSLRB 66



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

CRAIG PURCHASE

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Purchase v. Treasury Board (Correctional Service of Canada)

In the matter of a grievance referred to adjudication pursuant to section 92 of the
Public Service Staff Relations Act.

REASONS FOR DECISION

Before: Léo-Paul Guindon, adjudicator

For the Grievor: John Mancini, UNION OF CANADIAN CORRECTIONAL OFFICERS-
SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA-CSN

For the Employer: Anne-Marie Lebel, Articling Student

Heard at Moncton, N.B.,
October 20 and 21, 2004.

REASONS FOR DECISION

Grievance referred to adjudication

[1] Craig Purchase, a correctional officer at the CX-02 classification and level, has worked at Dorchester Penitentiary for Correctional Service Canada (CSC) since January 1998. On May 20, 2003, he grieved that he was not offered an overtime shift on May 19, 2003.

[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”).

Summary of the evidence

[3] The grievance was based on the following clause of the collective agreement between the Treasury Board and the UNION OF CANADIAN CORRECTIONAL OFFICERS-SYNDICAT DES AGENTS CORRECTIONNELS DU CANADA-CSN (Codes 601 and 651; expiry date May 31, 2002) (Exhibit G-1):

...

21.10 Assignment of Overtime Work

Subject to the operational requirements of the service, the Employer shall make every reasonable effort:

- (a) to allocate overtime work on an equitable basis among readily available qualified employees,*
 - (b) to allocate overtime work to employees at the same group and level as the position to be filled, i.e.: CX-1 to CX-1, CX-2 to CX-2, etc.;*
- and*
- (c) to give employees who are required to work overtime adequate advance notice of this requirement.*

...

[4] In his testimony, the grievor stated that he was on statutory holiday on May 19, 2003, as indicated on the “Day Shift Roll Call” (Exhibit E-1). The “Day Shift Roll Call” is posted on the wall 14 days in advance of the starting time of the schedule.

After the posting of the schedule, the grievor testified that he verbally indicated to his supervisor, Graham Lewis, that he was available to work overtime on May 19, 2003. He also put a star beside his name on the "Day Shift Roll Call" that was posted on the wall. When he returned to work, he noticed that overtime had been performed but that he was not called in. The grievor explained that employees on statutory holiday have priority for regular overtime on the basis of clause 26.10 of the collective agreement. Clause 26.10 reads as follows (Exhibit G-1):

26.10 *Subject to the operational requirements of the service the Employer shall make every reasonable effort to allocate, on an equitable basis, work in vacant posts on designated paid holidays to those employees on leave with pay who are readily available and qualified.*

[5] Correctional Supervisor Larry Hicks testified for the employer. He explained that the practice to be followed by an employee who wants to be called in to work overtime is that he has to advise the supervisor in charge of his availability. The supervisor will indicate on the working copy of the "Day Shift Roll Call" in his possession that the correctional officer is available for overtime by putting a star next to his name. No star appeared before the grievor's name on the working copy of the "Day Shift Roll Call" (Exhibit E-1). At the beginning of a shift, the supervisor in charge should assign employees available on shift in the positions which need to be filled. If some positions are still vacant after that exercise, the supervisor will have to call back employees who are identified as being available to work overtime, by a star being placed before their names on the working copy of the day shift roll call.

[6] A guideline confirming the allocation of responsibility was drafted in the fall of 2002, and was put into application at the Dorchester Penitentiary in January 2003 (Exhibit E-2). The guideline stated that it is the responsibility of the employee who is on statutory holiday to notify his supervisor that he is available for overtime work:

...

5) Prior to hiring overtime staff from the overtime staff list, every effort should be made to allow staff who have been "placed on stat" from a specific shift, to work in a vacancy on

another shift within a 24 hour window. It shall be the responsibility of the individual who has been placed on "stat" to identify, to his/her supervisor that he is prepared to work other shifts.

...

[7] The guidelines received application for several correctional officers who were on statutory holiday on May 19, 2003, as it appears from the working copy of the Day Shift Roll Call. According to this document, correctional officers who were identified as available for overtime and were called in for overtime, but could not be reached were: T.J. Murphy in post 1B and F. Savoie in post R-4. The document indicates that D.P. Cormier, who was available for overtime, was reached and accepted to work overtime in post T-1. R.Y. Cormier, who was on statutory holiday, but was not identified as available for overtime, was called back and worked overtime in post T-1, as was D.J. Robinson (post 4B). Two correctional officers who were not on statutory holiday were called back for overtime (R.G. Phinney and S. Cyr), as noted on the Day Shift Roll Call. No star appears before the grievor's name on the Day Shift Roll Call.

[8] On the working copy of the Morning Shift Roll Call, there is an indication that three correctional officers were called in for overtime (K. W. Fletcher, G. Desforges and J. Sanipass). From these three officers, Mr. Sanipass was assigned in post 6N to replace B. Reade, who was on statutory holiday.

Summary of the arguments

For the grievor

[9] The grievor's representative submitted that the grievor notified his supervisor, Mr. Lewis, of his availability to work overtime on his statutory holiday. That evidence was not contradicted by the employer. The guidelines state that a correctional officer has to put a star before his name on the posted schedule in order to notify his supervisor of his availability to work overtime. In the present case, it is the sole fault of the supervisor, who did not indicate the grievor's availability to work overtime by putting a star next to his name on the working copy of the schedule.

For the employer

[10] The employer submitted that the guidelines for distribution of overtime work on a statutory holiday give the responsibility to an employee to advise his supervisor

of his availability to work overtime on the day of his statutory holiday. In the present case, the grievor did not demonstrate that he notified his supervisor of his availability. He should have known that the supervisor only called available employees in from the working copy of the schedule and not from the one posted on the wall. The working copy of the schedule did not indicate that the grievor was available for overtime and the supervisor in charge on May 19, 2003, did not make a mistake when he did not call the grievor back in to work overtime.

Reply

[11] The grievor's representative replied that the employer's reply at the first level of the grievance process stated that the grievor made an attempt to make himself available to work on the statutory holiday. In the absence of contestation of the grievor's testimony, the adjudicator should accept the grievance.

Reasons

[12] The evidence shows that on May 19, 2003, the grievor was on statutory holiday. On that day, on the "Day Shift Roll Call", an indication to that effect was put on the working copy of the schedule beside his name, appearing in post 4D (Unit #4) for the 11:00 to 19:00 shift, and in post D (recreation) for the 07:00 to 11:00 shift (Exhibit E-1).

[13] It was the grievor's uncontradicted testimony that before May 19, 2003, he had verbally advised his supervisor, Mr. Lewis, that he was available to be called in for overtime for that day. On the working copy of the "Day Shift Roll Call", no indication can be found that the grievor advised his supervisor of his availability. No star appears next to his name but some stars do appear before the names of other correctional officers who, apparently, advised the supervisor of their availability to work overtime.

[14] D.P. Cormier, who was on statutory holiday (Unit #4, post 4C), was called back in to work overtime and performed four hours of work. At the bottom of the "Day Shift Roll Call", a note indicates that correctional officers Phinney and Cyr, who were not on statutory holiday, were called back to work overtime.

[15] In the decision I rendered in *Saindon, East and Aubertin v. Treasury Board (Solicitor General Canada - Correctional Service)*, 2002 PSSRB 73, I came to the conclusion that clause 26.10 of the collective agreement gave priority to the

correctional officers on designated paid holiday to perform overtime work in vacant posts on designated paid holidays. This interpretation is not an issue in the present case. Rather, the issue here rests with the application of the guidelines for the distribution of overtime, as per Article 26.10, which states that it is the responsibility of the individual who has been placed on statutory holiday to identify to his supervisor that he or she is prepared to work other shifts. The issue in this case is whether or not the grievor abided by the terms of the guidelines and indicated to the employer that he was “readily available” as per Article 26.10.

[16] On that issue, I have no reason not to accept the grievor’s testimony to the effect that he advised his supervisor, Mr. Lewis, that he was available to be called back in to perform overtime work on May 19, 2003. Mr. Lewis did not testify and the employer did not refute the grievor’s evidence on this point. Consequently, on this uncontested testimony, I have to conclude that the grievor has met his burden of proof and demonstrated, to my satisfaction, that he advised his supervisor of his availability to be called in for overtime work for the May 19, 2003, shifts. The supervisor did not put a star before the grievor’s name on the working copy of the “Day Shift Roll Call”, and that was the supervisor’s fault. The wording of the guidelines does not give the responsibility to the correctional officer to ensure that the supervisor puts an indication on the working schedule, but just dictates that the employee has to identify to his supervisor that he is prepared to work other shifts.

[17] The evidence also demonstrates that overtime work was performed on that day by other correctional officers who were not on statutory holidays. Had it not been for the mistake of the supervisor in charge, who did not indicate on the Day Shift Roll Call the availability of the grievor to perform overtime, the grievor would have been called in to perform overtime because he had priority for overtime for the vacant position due to the occurrence of a statutory holiday. I therefore find that but for the error, the grievor would have been entitled to perform the overtime.

[18] For all of the above reasons, I make the following order:

(The Order appears on the next page.)

Order

[19] For all these reasons, I accept the grievance and order the employer to pay the grievor four hours at the time-and-a-half compensation rate, as requested in the grievance and in accordance with clause 21.12 of the collective agreement.

June 29, 2005.

**Léo-Paul Guindon,
adjudicator**