

**Date:** 20061108

**Files:** 166-02-34909 to 34912

**Citation:** 2006 PSLRB 123



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**ROBERT BÉLANGER, DANIEL CÔTÉ,  
JULIEN FORTIER AND YVON JOBIN**

Grievors

and

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

Employer

Indexed as

*Bélanger et al. v. Treasury Board (Department of Fisheries and Oceans)*

In the matter of grievances referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Jean-Pierre Tessier, adjudicator

***For the grievors:*** Guylaine Bourbeau, Public Service Alliance of Canada

***For the Employer:*** Karl Chemsî, counsel

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Heard at Quebec City, Quebec,  
April 25 and 26, 2006.  
(P.S.L.R.B. Translation)

Grievances referred to adjudication

[1] Robert Bélanger, Daniel Côté, Julien Fortier and Yvon Jobin (“the grievors”) are employed by the Department of Fisheries and Oceans (“the employer”). They work on ships, and were working on the *Des Groseillers* during the time covered by these grievances.

[2] In fiscal year 2003–2004 the grievors forwarded their leave requests to the employer. In their requests, they indicated that they wanted to use overtime as compensatory time, and also as a few days of annual leave.

[3] The employer, in accordance with its policy on leave, indicated to them that they should change their requests so that they would first use annual leave and then compensatory leave.

[4] In December 2003 the grievors filed grievances contesting the employer’s decision. These grievances were referred to adjudication in July 2004, and the hearing was held in April 2006.

[5] 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*, these references 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”).

Summary of the evidence

[6] The grievors explained that in 2003 they had annual leave and had accumulated overtime.

[7] On their leave application forms, they had indicated that they wanted to take periods of leave in the summer and fall of 2003, and they included the sources of the leave. In particular, they indicated that they wanted to use compensatory leave and part of their annual leave (exhibits F-2 to F-5).

[8] The employer granted the requests, but used more of their annual leave. Mr. Bélanger had asked to use 26 days of compensatory leave and 5 days of annual leave. The employer gave him 11 days of compensatory leave and 20 days of annual

leave. The sort of change in leave debits was the same for the other three grievors who filed grievances.

[9] Mr. Bélanger pointed out that he preferred to use his compensatory leave and save his annual leave. He indicated that when using compensatory leave, if he left the ship during a stop in the Gulf of St. Lawrence, for example, the cost of transportation to Québec City would not be reimbursed. However, if he used his annual leave, the transportation costs would be reimbursed, and the employer would have to make an effort to grant this annual leave.

[10] Mr. Jobin corroborated Mr. Bélanger's comments. He indicated that he had taken annual leave in summer 2003, but that in the fall he preferred to use compensatory leave and keep his annual leave for the ship's operating period. He pointed out that he could never be certain of being able to use compensatory time during operating periods, whereas, with annual leave, the employer had to make an effort to grant leave subject to operational requirements.

[11] The testimony provided by the other two grievors, Mr. Côté and Mr. Fortier, were along the same lines as the previous ones.

[12] Louis Cauchy is a union delegate. He testified that, in his case, the employer had granted him compensatory leave and then annual leave without changing his request. He explained that employees submit their leave requests in the spring for the summer, and then in the fall for periods when the ship is laid up. Generally, the employer is not inclined to pay overtime, preferring to have employees accumulate and take compensatory leave.

[13] Mr. Cauchy agreed that the employer needed to know ahead of time when employees would be taking leave. According to him, closer consultation between the employer and the union should help in meeting employees' requests for annual leave throughout the year.

[14] Jean du Sablon testified for the employer. He has 30 years' experience with the Coast Guard and now serves as Marine Superintendent.

[15] Mr. du Sablon explained that the Coast Guard has 425 employees. Of these, 35 (officers and crew) are assigned to the *Des Groseilliers*. This ship conducts operations in the Gulf of St. Lawrence and in the Arctic.

[16] The *Des Groseilliers'* schedule consists of nine four-week navigation periods, two four-week maintenance periods and two four-week seasonal lay-up periods.

[17] The seasonal lay-up periods are not funded, so employees have to be laid off or paid out of annual leave or compensatory leave.

[18] Maintenance and lay-up periods give employees time to take annual or compensatory leave. Mr. du Sablon agreed that annual leave can be taken at other times, subject to operational requirements. He pointed out that it was particularly difficult to find replacement staff for operations in the Arctic.

[19] Employees have to indicate which type of leave they want, and when they plan to take compensatory leave. During certain periods they can be replaced, but the employer believes that at least 60 percent of regular and experienced staff must be kept on the job.

[20] Mr. du Sablon tabled a chart with the ship's schedule (Exhibit E-2), a memorandum, and a circular on the annual leave plan (exhibits E-3 and E-4).

[21] Huguette Flamand is the assignment supervisor for Operational Services. When planning operations, the unit asks ships' commanding officers and section heads to forward a preliminary plan of employees' annual leave requirements before the summer. She agrees that this is a goal, and that, in practice, leave requests are generally submitted in the spring and fall, when employees submit time sheets with their leave requests.

[22] She added that the leave plan provides a rough idea, but that leave is essentially managed from the time sheets. An employee may be granted leave, but it is only afterwards that the source of leave can be determined (annual leave and/or compensatory leave bank).

[23] Ms. Flamand made observations on three of the preliminary leave requests (exhibit E-5, E-7 and E-8). These were approved subject to subsequent determination of which bank would be debited. On the time sheets (exhibits F-2 to F-5), the grievors affected by this grievance were asking for more compensatory leave than annual leave.

[24] Ms. Flamand pointed out that employees must take annual leave during the year in which it is earned. In this case, none of the grievors had a plan for the use of their

remaining annual leave once they had used up the credits requested on the time sheets they submitted.

[25] Ms. Flamand referred to a leave chart for employees working on the *Des Groseilliers*. She pointed out that Mr. Cauchy was able to receive more compensatory leave during the lay-up period because he had submitted leave requests that used up all of his annual leave credits.

[26] Ms. Flamand agreed that the forms that are used have to include the approval of the leave period and the approval of the number of annual leave and compensatory leave debits.

#### Summary of the arguments

[27] The grievors referred to Annex “K” of the collective agreement between the Treasury Board and the Public Service Alliance of Canada (group: Operational Services (all employees), expiry date: August 4, 2003 (Exhibit F-1)).

[28] According to them, the Public Service Alliance of Canada (“the Alliance”) and the employer recognize the benefit to all parties of employees accumulating compensatory leave in anticipation of the ships’ non-operational or off-duty periods.

[29] This was the spirit in which they requested their compensatory leave during those periods when the ships were off duty, and only then their annual leave.

[30] According to them, the employer breached the provisions in Annex “K” of the collective agreement by encouraging them to use more of their annual leave during the periods covered in these cases.

[31] From their point of view, there were no valid consultations on the application of clause 4.04 and the following clauses in Appendix “G” of the collective agreement (Exhibit F-1) on annual leave. Moreover, annual leave has to be granted in a manner that is acceptable to employees.

[32] Thus, the employer acted contrary to the collective agreement by attempting to impose a date for annual leave.

[33] For its part, the employer believes that the current cases pertain to an issue of interpretation of clause 4.04 of Appendix “G” of the collective agreement. According to

it, annual leave must normally be taken during the year in which it is earned. In this regard, barring any indication to the contrary by the concerned employees, the employer is right to insist on having annual leave taken during the year.

[34] It is true that Annex “K” of the collective agreement provides for the use of compensatory leave when the ships are off duty. However, this is a separate provision from the one that concerns the taking of annual leave, and does not in any way affect the application of clause 4.04 of Appendix “G” of the collective agreement. It is up to the grievors to demonstrate that the provision on annual leave has been violated.

### Reasons

[35] The grievors pointed out that the employer did not consult them on the allocation of annual leave, and that there was insufficient advance notice of the approval and denial of the leave requested.

[36] On this point, I note that the grievances essentially address issues of interpretation, which, in my view, can be summarized as follows:

- a) Did the employer contravene the provisions of the collective agreement by forcing the grievors to use annual leave for the leave they were requesting during ships’ non-operational periods?
- b) Does Annex “K” of the collective agreement enable the grievors to request more compensatory leave during ships’ non-operational periods?

[37] Based on the wording of Annex “K” of the collective agreement, I must conclude that these are incentive clauses, and do not change the provisions in Appendix “G” of the collective agreement on annual leave.

[38] Annex “K” contains the following:

...

*The Alliance and the Employer mutually recognize the benefit to all parties of employees accumulating compensatory leave in anticipation of non-operational and/or off duty periods.*

...

*Accordingly employees are encouraged to accumulate and retain compensatory leave credits sufficient to cover:*

- (1) periods during which the vessel will be non-operational by reason of refit, repair, seasonal lay-up,*  
*and*
- (2) periods during which the employee is not required to work in accordance with a rotational or relief crew system.*

...

[39] With regard to the use of annual leave, the text of article 4 of Appendix "G" should be reviewed to determine the parties' obligations. In the present case, the answer lies in clauses 4.04 and 4.06 of Appendix "G" of the collective agreement, which read as follows:

...

**4.04** *The Employer shall give the employee as much notice as is practicable that a request for vacation or furlough leave has or has not been approved. If the leave is not approved, the employee shall be so advised.*

...

**4.06**

*a) Employees are expected to take all their vacation leave during the vacation year in which it is earned.*

*b) Subject to operational requirements, the Employer shall make every reasonable effort to schedule the employee's vacation leave in the vacation year in which it is earned and in a manner acceptable to the employees.*

...

[40] On the one hand, the employee submitted a request for annual leave. The employer made an effort to grant the leave request during the year in which it was earned and in a manner acceptable to the employee, which is to say at a time that best suited the employee.

[41] In the current cases, the employer insisted on having the grievors use their annual leave during the year in which it was earned. In principle, the wording of clause 4.06 supports the employer.

[42] However, in practice, clause 4.05 imposes an obligation on the employer to grant annual leave during the year, but “in a manner acceptable to the employee” and taking operational requirements into consideration.

[43] In terms of the timing of the use of annual leave, it would seem that there was little interaction among the grievors and the employer.

[44] However, it should be noted that, based on the evidence provided by the grievors, the employer granted Mr. Cauchy the requested annual leave and compensatory leave in a manner acceptable to this employee. The latter had submitted a request in which he used all of his annual leave and some compensatory leave.

[45] Several decisions by the Board have found that employees must submit during the reference year annual leave requests that add up to the use of all of their annual leave during the year in which it is earned. Otherwise, the employer may set the date for the annual leave, as indicated in *Higgs v. Treasury Board (Solicitor General of Canada - Correctional Service)*, 2004 PSSRB 32; *Dawe v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-15468 (1987) (QL); *Marin v. Treasury Board (Human Resources Development Canada)*, 2002 PSSRB 109; and *Neto v. Treasury Board (Employment and Immigration)*, PSSRB File No. 166-02-16296 (1987) (QL).

[46] A review of the previously quoted decisions leads me to conclude that every situation is a particular case. The difficulty lies in determining how and at what point the employer can ensure that annual leave will be taken during the year. In practice, employees cannot be expected to plan the use of all of their annual leave as early as April or May.

[47] In this case, the employer wanted to ensure that all of the four grievors' annual leave would be used. The employer took advantage of the ship's seasonal lay-up to arrange for this before the navigation season resumed, which left December to May for the use of the annual leave days.

[48] In the case of the grievors, they did not submit requests covering all of their annual leave, preferring to keep a few in reserve, if required. This situation developed in fall 2003, which left only the December 2003 to March 2004 period in which to use the annual leave.



[49] It is true that there is no strict obligation in the collective agreement forcing employees to submit requests to use all of their leave. However, in this case, I understand the employer's position on wanting to know leave requests in the fall, before the December-to-March navigation period resumes.

[50] I had previously indicated that there was little interaction between the employer and the grievors. However, in its response to the grievances (Exhibit E-1), the employer indicated to the grievors that, unless they submitted a request to use the unused annual leave days, it would use their annual leave days rather than their compensatory leave days.

[51] In fact, on December 16, 2003, before the grievances were referred to arbitration, the employer clearly set out its position as follows:

[Translation]

...

*I have carefully reviewed the circumstances that led to your grievance. Since 1995, non-operational periods for ships are no longer funded. Since leave has to be granted subject to operational requirements, it is preferred if employees use these off-duty periods for annual and/or compensatory leave. Employees wishing to take annual leave at other times of the year may request such, and every request will be individually assessed.*

*Clause 4.06 of Appendix "G" of your collective agreement states that you are expected to take all your vacation leave in the year in which it is earned and that, subject to operational requirements, the employer will make every reasonable effort to schedule employees' vacation leave in a manner acceptable to the employees. Given that we did not receive an annual leave request from you for the current fiscal year, we set your vacation period during your ship's non-operational period.*

*We only carry over annual leave when it is impossible to grant annual leave in the year in which it is earned, which is not the case in your situation. If you change your decision and wish to request annual leave by March 31, 2004, we will consider whether it is possible to grant it to you, which may result in leave being taken during the ship's off-duty period.*

...

[52] The evidence does not show that the grievors communicated with the employer between December and April to indicate when they would like to use their unused annual leave.

[53] The grievors did not make a specific annual leave request for the remaining leave. They have only themselves to blame if, because they failed to specify their annual leave dates, the employer granted leave at a time that could be acceptable to the employees. In fact, this annual leave coincided with the period when the grievors wished to be on leave, but using more compensatory leave.

[54] This decision applies to this case and does not in any way imply that the employer may, as a rule, require that all annual leave be requested in November before the winter navigation period resumes.

[55] While there could have been more interaction between the employer and the grievors, the latter, on the heels of the employer taking the position of asking them to use their unused annual leave, made no request along these lines. In light of the circumstances, the employer is entitled to request that annual leave be used during the year in which it is earned.

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

*(The order appears on the following page)*

Order

[57] The grievances are dismissed.

November 8, 2006.

**Jean-Pierre Tessier,  
adjudicator**