

Date: 20060303

File: 166-02-34743

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*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

STERLING HINCH

Grievor

and

**TREASURY BOARD
(Department of National Defence)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: Sylvie Matteau, adjudicator

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

For the Employer: Daniel Trépanier

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,
February 24, 2006.

REASONS FOR DECISION

[1] This is a grievance regarding the interpretation of the collective agreement as it applies to the grievor, Mr. Hinch, a Fire Prevention Inspector (FR), for overtime worked on May 19, 2003. The issue is to determine at what rate of pay the grievor should be paid for work on that day, a statutory holiday.

[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.

[3] The parties jointly agree to the following facts:

. . .

1. *The grievor, Sterling Hinch, is an indeterminate employee of the Department of National Defence. He has continuous service from September 10, 1999. At the time of his grievance, he was employed at Canadian Forces Base Suffield.*
2. *At the time of his grievance, the grievor was covered by the Operational Services group collective agreement between the Treasury Board and the Public Service Alliance of Canada that expired on August 4, 2003.*
3. *At the time of his grievance, the grievor occupied the position of Fire Inspector, classified at the FR-02 group and level.*
4. *At the time of the grievance, the grievor's regularly scheduled hours of work were thirty-seven and one half (37.5) hours of work per week. His hours of work were 8:00 to 16:30 Monday to Friday.*
5. *On Monday, May 19, 2003, Mr. Hinch worked overtime to replace a shift worker firefighter from 8:00 to 18:00. He was paid for 10 hours at time and one half.*
6. *May 19, 2003, was designated Statutory Holiday.*
7. *On July 2, 2003, Mr. Hinch filed a grievance stating that he was paid at a lower overtime rate than he was entitled for work on a second day of rest, in*

accordance with article 2.09 of the collective agreement. He requested payment at the double time rate as opposed to time and one half. The grievance was also referred to adjudication under article 28.

...

[Sic throughout]

[4] Mr. Hinch argued that May 19, 2003, was in fact his second consecutive and contiguous day of rest, according to clause 2.09 of the collective agreement, and that he was, therefore, entitled to double-time compensation for each hour of overtime worked on that day. He also specified that, when working overtime, he is not working as an FR on a regular work schedule, but as a firefighter, working according to the variable hours of work schedule under article 28 of the collective agreement.

[5] The employer indicated out that, because Mr. Hinch does not normally work variable hours, there was no need to rely on article 28 and clause 2.09 in his case. Furthermore, article 28 provides for exclusions. Its introduction reads as follows:

This article does not apply to the FR, and LI Groups and the SC Group other than those employees subject to Annex B of Appendix G (Conventional Work System).

[6] Mr. Hinch noted that clause 2.02 regarding hours of work and overtime contradicts article 28 in that it also creates an exception for the FR group.

Clause 2.01 shall not apply and Article 28 shall apply to an employee who is employed as a fire chief, deputy chief, fire prevention officer or a fire prevention inspector. The scheduled hours of work for such employees shall be thirty-seven and one half (37 1/2) hours per week exclusive of meal breaks.

[My emphasis]

[7] After reviewing and analysing these provisions as a whole, I find that the exclusion created in clause 2.02 is limited to clause 2.01 regarding hours of work per week. The exclusion found in article 28 is much broader and refers to all the provisions of article 28.

[8] Furthermore, clause 2.08(b) is very specific and addresses the issue of compensation for overtime in the case of employees of the FR group:

2.08 (b) Subject to clause 2.10, an employee who is employed as fire chief, deputy chief, fire prevention officer or fire prevention inspector who is required to work overtime on the employee's scheduled work day is entitled to compensation at the employee's hourly rate of pay for the first one-half (½) hour of overtime worked by the employee and at time and one-half (1½) for all overtime worked in excess of the first one-half (½) hour of overtime in each work day.

[9] The grievor is an FR and works normal hours (8:00 a.m. to 4:30 p.m.) from Monday to Friday. His situation can be analysed only from that point of view and not, as he suggested, from the point of view of the duties that he was called to perform on the day he worked overtime. May 19, 2003, was a designated paid holiday under sub-article 2(m) of the collective agreement and cannot, in the case of an employee normally working regular hours, be considered a day of rest in accordance to sub-article 2(h). It provides:

*(h) **Day of rest** in relation to a full-time employee means a day other than a holiday on which that employee is not ordinarily required to perform the duties of his or her position other than by reason of the employee being on leave or absent from duty without permission (jour de repos);*

[My emphasis]

[10] In conclusion, the grievor can be compensated only for overtime as calculated in accordance to his position, that of FR, and according to his regular schedule. Clause 2.09 does not apply to the grievor. Sub-clause 2.08(b) is the appropriate provision to apply in order to determine the rate of pay of the grievor.

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

(The Order appears on the next page)

Order

[12] The grievance is denied.

March 3, 2006.

**Sylvie Matteau,
adjudicator**