

**Date:** 20060630

**File:** 166-02-35915

**Citation:** 2006 PSLRB 80



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**RODERICK MURPHY**

Grievor

and

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

Employer

***EXPEDITED ADJUDICATION DECISION***

***Before:*** Sylvie Matteau, adjudicator

***For the Grievor:*** David J. Jewitt, counsel

***For the Employer:*** Jeff Laviolette

**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.

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Heard at Ottawa, Ontario,  
June 23, 2006.

## *REASONS FOR DECISION*

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[1] This grievance, filed by Roderick Murphy, Chief Engineer (SO-MAO-09) with the Canadian Coast Guard, Atlantic Region (Department of Fisheries and Oceans) on October 25, 2002, concerns the interpretation of dispositions regarding lay-day administration found in “Appendix H” of the Agreement between the Treasury Board and The Canadian Merchant Service Guild, expiring March 31, 2003. The grievance was referred to adjudication March 16, 2005.

[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 (the “former Act”).

[3] Whereas the parties have agreed to handle this matter by way of expedited adjudication, they submitted a book of documents, including an “Agreed Statement of Facts” and summaries of their arguments. That statement of facts reads as follows:

1. *Mr. Murphy is currently an employee of the Department of Fisheries and Oceans, Canadian Coast Guard Agency, as a Chief Engineer, SO-MAO-09 in the Atlantic region. Mr. Murphy is a member of the Ships’ Officer bargaining unit under the Ships’ Officer Collective Agreement.*
2. *The relevant collective agreement in this matter is the Ships’ Officers collective agreement signed on February 28, 2002 with an expiry date of March 31, 2003.*
3. *Chief Engineer Murphy is subject to Appendix “H” of the above-noted collective agreement. He is also in receipt of the Extra Responsibility Allowance as governed by Appendix “G” while engaged as a Chief Engineer, SO-MAO-09. In 2002, Mr. Murphy was paid at the annual rate of \$11,193.00 for the Extra Responsibility Allowance.*
4. *Under Appendix “H”, an Officer is either at work, on lay-days, or on authorized leave with pay – see Appendix “H” – General, paragraph (d), page 115.*
5. *The Lay-Day system operates under a 28-day ON cycle and a 28-day OFF cycle. During the ON cycle, Officers work 12 hours per day but they do not*

work during the OFF cycle. A “lay-day” system has been developed in order to ensure that they continue to be paid during the OFF cycle. During the ON cycle, they are paid for 6 hours per day while they earn “lay-day” credits for each day worked, which go into a lay-day bank. During the OFF cycle, they continue to be paid 6 hours per day while at the same time, a lay-day credit is deducted from their lay-day bank.

6. Under the lay-day crewing system, Officers are scheduled ON duty and Off duty. Mr. Murphy was scheduled for his ON duty cycle to commence on September 6, 2002, (12:00 p.m.) to October 4, 2002, (12:00 p.m.) and he was scheduled for his OFF duty cycle from October 4, 2002 (12:00 p.m.) to November 1, 2002 (12:00 p.m.).
7. Mr. Murphy was required by his Employer to report to work one hour before his scheduled ON duty time for crew change duties.
8. The grievor submitted a time sheet dated October 4, 2002 for the work cycle September 6, 2002 (11:00 a.m.) to October 4, 2002 (12:00 p.m.) and requested a lay-day accruiement to be based on a 28.083-day period, thereby earning 28.083 days for the ON shift portion. Furthermore, the grievor requested a utilization of 27.917 lay-days for the OFF shift portion October 4, 2002 (12:00 p.m.) to November 1, 2002 (11:00 a.m.). This request was denied by the Employer who referred to Appendix “G” of the collective agreement.
9. On or about October 25, 2002, Mr. Murphy submitted his grievance alleging a violation of Appendix “H” by not paying him a prorated lay-day as submitted in his timesheet dated October 4, 2002 (ie. for the time he was required by his Employer to be at work outside his ON duty schedule).

#### **History with respect to Appendix “G”**

10. On October 31, 2000, an adjudication decision – PSSRB File No. 166-2-29584 Giasson and Treasury Board – was rendered by Evelyn Henry, Deputy Chairperson, regarding certain disputes the parties to the collective agreement were having at that time surrounding Appendix “G”.

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11. Subsequently, the Employer distributed a Memorandum dated December 12, 2000 from John Adams with respect to implementing the Giasson decision. The Memorandum (see document #6) stated:

*Lay-day credits should not be deducted from an officer's lay-day bank when the employee is required to perform work. Accordingly, when an officer is required to report for work during a normally scheduled lay-day period or remain at work beyond the officer's scheduled crew change time, the Officer's lay-day bank will be re-credited the hour(s) actually worked (pro-rated lay-day). For greater clarity, one hour of work prior to or beyond a crew-change would equate to one-twelfth (1/12) of a lay-day credit. Officers will be required to submit and receive approval for time worked during pre-crew change briefings prior to making any changes to the lay-day banks.*

12. Subsequent to that decision, the parties negotiated revised wording with respect to Appendix "G" which stipulated as follows:

*"This allowance is paid to officers described in this Appendix in recognition of the additional responsibilities involved in the performance of the regular duties of the position. This also recognizes that, notwithstanding the hours of work and overtime provisions of the agreement, the normal hours for Officers identified by this Appendix extend beyond those described by hours of work and overtime provisions."*

13. No changes were negotiated at that time with respect to Appendix "H" - LayDay Operational Crewing System, including language with respect to Accumulation and Debiting of lay-days.
14. On April 25, 2002 (see document #7), and July 4, 2002 (see document #8), the Employer put out memoranda stating that "pursuant to the change made to the wording of "Appedix G" in the new Ships' Officers collective agreement effective February 28, 2002, the "Giasson" adjudication decision no longer applies" (see document #7).

15. *These memorandum and the interpretation have been disputed by the Guild in correspondence dated August 2, 2002 from Lawrence Dempsey who was then National Secretary Treasurer - see document #8 - and correspondence dated August 26, 2002 from Captain Maury Sjoquist who was then National President - see document #10.*
16. *The Guild received a response from Charles Gadula (see document #11) on August 21, 2002 which confirmed that the Employer's position remained as outlined in his letter dated July 4, 2002 (see document #8).*

[Sic throughout]

[4] "The Guild Position" reads as follows:

1. *The Guild takes the position that the ERA does not cover time spent on crew change-overs, The ERA covers time that is spent working outside the normal "...Hours of Work and Overtime provisions of the Agreement" during the Officer's ON duty cycle. If he must work during the OFF duty cycle, he should be compensated for doing so and should not be using part of his lay-day credits. For instance, if an Officer is called in to work in the middle of his 28-day OFF cycle, the lay-day is prorated. The Guild questions why it is any different if he reports two hours prior to a crew change.*
2. *The Guild takes the position that the Giasson grievance is determinative of this matter in that Mr. Giasson was entitled to have his lay-day prorated for the time he spent on the crew change. Lay-days, from the Guild's perspective, are meant to be time off with pay which the Officer has earned for working under the lay-day system 28 days on.*
3. *The Guild further states that where Ship's Officers are called in to work during the middle of their OFF duty cycle, lay-days are prorated (see document #5 - Codes used for Leave and Pay).*
4. *The normal hours of work for an Officer on board a vessel while on their ON duty cycle is 12 hours per day. The Guild accepts that for a Chief Engineer, those hours may extend beyond*

*the 12 hour time limit while on duty, but that any request to work outside the ON duty cycle is not covered by Appendix "G".*

5. *To put this matter another way, the Guild states that an Officer cannot be on lay-days and using credits which they have earned by working and at the same time, also working for the Employer during the exact same time frame - without any layday credit accumulating for such time worked.*

[Sic throughout]

[5] The "Synopsis of the Employer's Argumentation" reads as follows:

**General statement**

*It is the Employer's position that Management has not contravened Appendix "H" of the Ships' Officers collective agreement by not providing a pro-rated lay as requested Mr. Murphy's timekeeping record dated October 10, 2002.*

*It is the employer's position that:*

*Through collective bargaining as well as past case law, the collective agreement provisions have evolved in order to compensate for the period spent on crew change over.*

*Two major amendments were negotiated and are reflected in appendix "G" of the Ships Crew collective agreement*

- *As a first amendment, the name of the Appendix changed from Extra Duty Allowance to Extra Responsibility Allowance.*
- *The second amendment is a major amendment as the parties introduced a preamble as to why certain officers are in receipt of such an allowance:*
  - *In the first part of the preamble, it is clear that the allowance is paid to officers in recognition of the additional responsibilities involved in the performance of the regular duties of the position. In essence, the Chief Engineer is the technical authority regarding machinery and systems on board ship. Prior to sailing, the Chief Engineer has the authority over the vessel and can take action if there is a safety issue or if the ship is not ready. Therefore, it is the employers submission that the debrief being performed prior to the crew*

*changeover are additional responsibilities in the performance of the regular duties.*

- *In the second part of the preamble, the parties recognize that, notwithstanding the Hours of Work and Overtime provisions of the Agreement, the normal hours for Officers identified by this Appendix extend beyond those described by the Hours of Work and Overtime provisions. The crew change-over de-brief is one example of a situation outlined above, as such as the collective agreement states (appendix "H" c) P-115), the officers hours of work are 12 on and 12 off which commences at the designated crew change time.*
- *It is the employer's submission that Mr. Murphy is to be considered on lay-day until the crew change which took place at noon on September 6, 2002. However, it is recognized by the employer that this time should not go without some form of remuneration, it is the employer's position, that through the past collective bargaining process language was introduced to provide for remuneration, which in this case is covered by the amounts that Mr. Murphy received by way of the Appendix "G" - Extra Responsibility Allowance.*
- *Earlier in my submission, I presented two memorandum's that were prepared in order to provide guidance with respect to the changes of the collective agreement. Flowing from those two documents, a letter was received on August 2, 2002, from Mr. Laurence Dempsey who was at the time National Secretary-Treasurer for the Canadian Merchant Service Guild (last paragraph). It is the employer submission that the changes were directly linked to the Giasson case, the reason of the amendments were two-fold to reinforce that the Appendix G remained pensionable and that it would provide for remuneration to cover situations such as the crew change over period.*

*It is the Employer's submission that the grievor has not met his burden of proof in establishing that the collective agreement has been violated. The Employer's main argument is quite simple - The debrief that occurs prior to the crew change is covered by Appendix "G" and does not attract a prorated lay-day.*

[Sic throughout]

Additional arguments of the parties

[6] Additional arguments were presented at the hearing. The representative of the grievor argued out that an employee working under the lay-day system is either on or off duties. The dispositions that should apply to the individual should be based on that factor. The decision of the Board in *Giasson v. Treasury Board*, 2000 PSSRB 94 should apply. The grievor should be paid a prorated lay-day for the hour worked.

[7] The representative of the employer maintained that there was no contravention of "Appendix H". He relied on the past practice and the history of the negotiations of "Appendix G", including the adjustments made after the *Giasson* case. According to the employer, the debriefing session at shift change is part of the engineer's duties and responsibilities covered by the Extra Responsibilities Allowance, and the grievor is compensated for this time by that allowance. The employer asked that the grievance be denied and that this duty be recognized as part of the extra responsibilities covered by the allowance found in "Appendix G" of the collective agreement.

Reasons for decision

[8] I have found in favour of the grievor. Since the *Giasson* decision, a change in wording to "Appendix G", replacing the term "extra duties" with "extra responsibilities", would include, in the employer's opinion, time spent on changeover debriefing for Chief Engineers. According to the new preamble of "Appendix G", the Allowance for Extra Responsibility "...is paid to officers described in this Appendix in recognition of the additional responsibilities involved in the performance of the regular duties of the position".

[9] However, no evidence was led regarding what additional responsibilities were included in the preamble. One must remember that this collective agreement provision, with the exception of the preamble, formed part of the collective agreement under which *Giasson* was decided. The distinction made by the employer in referring to the wording change is not enough, in my opinion, to set aside the effects of the *Giasson* decision without any evidence that this was the intended impact of the new wording and I do not consider that the new wording alone is sufficient to lead me to this conclusion. There is still "...no provision in the collective agreement that permits the deduction of lay-day credits for the period a Chief Engineer is on duty during the



'briefing' or 'debriefing' period although working outside the usual 12-hour on-duty period", as stated in paragraph 50 of *Giasson*. As decided in the latter decision, the grievor is not entitled to any additional compensation for the debriefing session, but the employer still cannot deduct lay-day credits during that time. The grievor should be entitled to the lay-day prorating.

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

*(The Order appears on the next page)*

Order

[11] The grievance is allowed and the grievor will be paid a pro-rated lay-day for the time that he was required to be at work for the debriefing session of September 6, 2002.

June 30, 2006.

**Sylvie Matteau,  
adjudicator**