

Date: 20060630

File: 166-02-36275

Citation: 2006 PSLRB 81



*Public Service
Staff Relations Act*

Before an adjudicator

BETWEEN

SCOTT DOAN

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.

[Heard at Ottawa, Ontario,
June 23, 2006.](#)

REASONS FOR DECISION

[1] This concerns a grievance by Scott Doan, Deck Officer on the CCGS Sir Wilfrid Laurier, dated October 15, 2004, whereby he alleges a violation of articles 20 and 22 of “Appendix H” of the Agreement between the Treasury Board and The Canadian Merchant Service Guild, expiring March 31, 2006. The grievor became sick during a period of approved vacation leave and his later request to displace this vacation leave with sick leave was, in his view, unreasonably denied.

[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, the parties jointly agree in the “Agreed Statement of Facts” that:

...

1. *Mr. Scott Doan is currently employed by Fisheries and Oceans Canada as a Deck Officer on the CCGS Sir Wilfred Laurier, SAO, MAO -7.*
2. *The relevant collective agreement in this matter is the Ship’s Officers collective agreement with an expiry date of March 31, 2006.*
3. *Mr. Doan is an “Appendix H” employee which means that he works under the Lay-Day Operational Crewing System.*
4. *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. Lay-Days are considered days of work. Officers can and are called in to work on Lay-Days. For example, Mr. Doan was called in for two weeks’ work during his Lay-Days in*

early 2004 in order to cover off for a grounded ship, Gordon Reed. Officers can also be called in for other reasons such as Training during their Lay-Days.

5. Under Appendix H, Officers are either (i) at work, (ii) on lay-days, or (iii) on authorized leave with pay.

Facts Relating to the Grievance

6. In early February 2004, Mr. Doan submitted a time sheet identifying an OFF duty cycle from 1200 hours 03/02/2004 to 1200 hours 02/03/2004.
7. On February 3, 2004, Mr. Doan requested vacation leave for February 17th to March 2nd and was approved.
8. On February 3, 2004, Mr. Doan goes on his OFF duty cycle on laydays.
9. On February 17, 2004, Mr. Doan starts his vacation leave.
10. On February 24, 2004, Mr. Doan became ill and submitted all the necessary medical forms to support his request for sick leave to displace his vacation leave in accordance with Article 22.07. Notwithstanding that his sick leave was certified, his request was denied on March 29, 2004 by the Employer pursuant to Appendix "H" "Leave Interpretation" see p. 166. As such he remained on Vacation Leave for the seven (7) days of his period of illness.
11. A grievance was filed on October 15, 2004 alleging:

I hereby grieve a violation of Article 20, 22, Appendix H and any other relevant Article/Appendices in that while on authorized leave with pay (Vacation Leave) I became sick and my request to displace vacation leave with sick leave was unreasonably denied.

Requests that his request to displace approved vacation leave with sick leave be granted and further he/CMSG reserve the right to seek such other redress as is appropriate.

...

[Sic throughout]

[4] The Guild also submitted a written synopsis of its position, which reads as follows:

1. *In support of the grievance, the Guild relies on Article 22.07 of the Collective Agreement which reads as follows:*

22.07 Where, in respect of any period of vacation or compensatory leave, an officer is granted sick leave with pay in accordance with paragraph 22.03, the period of vacation or compensatory leave so displaced shall be reinstated to the officer's credit. This provision does not apply to seasonal officers during the off-duty season.

2. *The Guild's response to the Employer was laid out in a letter from Edd Langelier to Michael Gardiner dated August 19, 2004:*

"[U]nder Appendix H an officer is either at work, on lay days OR on authorized leave with pay (Appendix H-General-para (d). Mr. Doan was on authorized leave with pay, being annual/vacation leave. As a result, it is the Guild position that Appendix H-Leave-Interpretation at the top of page 116 of the collective agreement has no bearing nor relevance. To be clear, Mr. Doan was NOT on lay days, he was on approved vacation leave. Therefore the issue of off vs on duty cycles has no bearing."

3. *In the alternative, the Guild takes the position that the provisions of Article 22.07 are specific with respect to Vacation Leave and override the general provisions of Appendix "H" regarding Officers who become sick while not on vacation.*

[Sic throughout]

[Emphasis in the original]

[5] The employer argued that the result of allowing the conversion from vacation leave to sick leave while the officer is on the lay-day cycle of his schedule would mean that he could be granted sick leave during that time. This would go against the condition titled "Leave - Interpretation" as contained in Appendix "H" of the collective agreement, where it is stated that "Sick leave With Pay and Injury on Duty Leave can

only be granted during the on-duty cycle. . . .” of an officer’s schedule. The conflict between two provisions should be resolved in favour of the more specific of the two. In this case, the specificity of the clauses and conditions defining the lay-day system at Appendix “H” should override the more general dispositions of the main agreement.

[6] As argued by the employer, the more specific provision of Appendix “H” overrides the more general provisions of the collective agreement, as it more specifically refers to the lay-day scheduling system and how it applies in a variety of circumstances to those working under it.

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

(The Order appears on the next page)

Order

[8] The grievance is denied.

June 30, 2006.

**Sylvie Matteau,
adjudicator**