Date: 20080812

File: 166-02-37179

Citation: 2008 PSLRB 67

Public Service Staff Relations Act

Before an adjudicator

BETWEEN

YVES JULIEN

Grievor

and

TREASURY BOARD
(Canada Border Services Agency)

Employer

Indexed as
Julien v. Treasury Board (Canada Border Services Agency)

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

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Amarkai Laryea, Public Service Alliance of Canada

For the Employer: Caroline Proulx, student-at-law

Heard at Ottawa, Ontario,
June 24, 2008.
(PSLRB Translation)

I. Grievance referred to adjudication

[1] On February 21, 2004, Yves Julien ("the grievor") filed a grievance alleging that the employer should have paid him a meal allowance when he worked overtime on December 27, 2003. The applicable collective agreement, for the Program Delivery and Administrative Services bargaining unit, was concluded between the Canada Customs and Revenue Agency ("the CCRA") and the Public Service Alliance of Canada on March 22, 2002 ("the collective agreement"). The Treasury Board ("the employer") has since replaced the CCRA as the employer.

[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.

II. Summary of the evidence

[3] The evidence submitted at the hearing consists of an agreed statement of facts, which reads as follows:

> [Translation]
>
> . . .
>
> *[1] On December 12, 2003, the Governor in Council, under Order in Council P.C. 2003-2064 and in conformity with the* Public Service Rearrangement and Transfer of Duties Act, *transferred certain portions of the Canada Customs and Revenue Agency (CCRA) to the Canada Border Services Agency (CBSA). The CCRA is now called the Canada Revenue Agency (CRA) and has remained a separate agency appearing in Schedule V to the* Financial Administration Act *(FAA).*
>
> *[2] The portions that were transferred to the Canada Border Services Agency (CBSA) included the transfer of public service employees and positions under the* Public Service Employment Act. *The CBSA is part of the core public administration under Schedule IV to the FAA.*

> *[3] The collective agreement that applied during the transition period, which was from December 12, 2003 to March 14, 2005 (the date on which the Program and Administrative Services [PA] group agreement was signed), is the one that had been signed between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada.*
>
> *[4] Yves Julien is a border services officer (PM-02 at the time he filed his grievance). The collective agreement between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada (Program Delivery and Administrative Services; expiry date: October 31, 2003) applies.*
>
> *[5] Saturday, December 27, 2003 was a designated holiday for Mr. Julien.*
>
> *[6] On December 27, 2003, Mr. Julien was to work for a period of 10.72 hours, that is, for his scheduled hours of work. The complainant was paid under clause 25.27(e) of the collective agreement in question.*
>
> *[7] On December 27, 2003, at the employer's request, Mr. Julien worked three (3) hours immediately after his scheduled hours of work, for a total of 13.72 hours that day.*
>
> *[8] The Canada Customs and Revenue Agency set up the CAS (Corporate Administrative System) on July 8, 1999. Before that date, officers who worked three (3) hours in addition to their scheduled hours of work on a designated holiday were reimbursed for a meal under clause 28.09. Since July 1999, because the configuration of the CAS does not permit it, employees who work three (3) hours in addition to their scheduled hours of work on a designated holiday are no longer reimbursed under clause 28.09.*
>
> *[9] The employee did not receive a $9 reimbursement for a meal for work performed immediately after his scheduled hours of work on December 27, 2003.*
>
> *[10] On February 16, 2004, [sic] Mr. Julien files a grievance. The grievance is dismissed at the final level on January 23, 2006.*
>
> . . .
>
> [Emphasis in the original]

[4] The following clauses of the collective agreement apply to this case:

. . .

ARTICLE 2
INTERPRETATION AND DEFINITIONS

2.01 *For the purpose of this Agreement:*

. . .

"overtime" *(heures supplémentaires) means:*

(i) in the case of a full-time employee, authorized work in excess of the employee's scheduled hours of work,

. . .

*****ARTICLE 25***
HOURS OF WORK

. . .

25.27 Specific Application of this Agreement

For greater certainty, the following provisions of this Agreement shall be administered as provided herein:

. . .

(e) ***Designated Paid Holidays (clause 30.08)***

(i) A designated paid holiday shall account for seven and one-half (7 1/2) hours.

. . .

*****ARTICLE 28***
OVERTIME

. . .

28.04 General

(a) An employee is entitled to overtime compensation under clauses 28.06 and 28.07 for each completed period of fifteen (15) minutes of overtime worked by him or her:

(i) when the overtime work is authorized in advance by the employer or is in accordance with standard operating instructions,

and

(ii) when the employee does not control the duration of the overtime work.

(b) Employees shall record starting and finishing times of overtime work in a form determined by the employer.

(c) For the purpose of avoiding the pyramiding of overtime, there shall be no duplication of overtime payments for the same hours worked.

(d) Payments provided under the Overtime, Designated Paid Holidays and Standby provisions of this Agreement shall not be pyramided, that is an employee shall not receive more than one compensation for the same service.

. . .

28.09 Meals

(a) An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount of nine dollars ($9.00) except where free meals are provided.

. . .

ARTICLE 30
DESIGNATED PAID HOLIDAYS

. . .

Work Performed on a Holiday

. . .

30.08

(a) When an employee works on a holiday, he or she shall be paid time and one-half (1 1/2) for all hours worked up to seven and one-half (7 1/2) hours and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday,

or

(b) upon request, and with the approval of the employer, the employee may be granted:

> *(i) a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday,*
>
> *and*
>
> *(ii) pay at one and one-half (1 1/2) times the straight-time rate of pay for all hours worked up to seven and one-half (7 1/2) hours,*
>
> *and*
>
> *(iii) pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of seven and one-half (7 1/2) hours.*

. . .

III. Summary of the arguments

A. For the grievor

[5] On December 27, 2003, having worked three hours of overtime following his workday, which was on a holiday, the grievor was entitled, under clause 28.09(a) of the collective agreement, to a reimbursement of $9 for a meal, which he did not receive.

[6] The grievor was paid for December 27, 2003 in accordance with clause 25.27(e) of the collective agreement, which is related to clause 30.08.

[7] The only reason that could prevent the meal allowance from being paid would be if such a reimbursement were to constitute pyramid compensation, which is prohibited under clause 28.04(d) of the collective agreement. However, the reimbursement in question was not "pyramided" because the reason for its payment (a meal, in this instance) is different.

[8] As an alternative argument, the grievor submits that, according to the evidence, the employer has paid the $9 meal allowance under similar circumstances in the past and that this establishes a right for the grievor based on past practice.

[9] The grievor submitted the following decisions to support his arguments: *Municipality of Metropolitan Toronto v. Canadian Union of Public Employees, Local 43* (1984), 13 L.A.C. (3d) 356; *John Bertram & Sons Co. Ltd. v. International Association of Machinists, Local 1740* (1967), 18 L.A.C. 362; and *Associated Freezers of Canada Ltd. v.*

Teamsters Union, Local 419 (1979), 23 L.A.C. (2d) 40. He also referred me to paragraph 8:2140 of Brown and Beatty, *Canadian Labour Arbitration*, 4th ed.

B. <u>For the employer</u>

[10] The employer did not violate the collective agreement by failing to reimburse the meal claimed by the grievor.

[11] Article 30 of the collective agreement pertains to holidays and article 28 to overtime. Those articles are independent of each other. Clauses 28.09 and 30.08 are clear, precise and complete. If the CCRA and the grievor's bargaining agent had wanted article 28 and clauses 28.09 and 30.08 to be interrelated, they would have made that clear in the collective agreement, which is not the case.

[12] The employer referred to several clauses of the collective agreement in which interrelations are made, and in each case referrals to the other clause are explicit.

[13] The employer notes that article 30 of the collective agreement is self-contained and that no definition is needed for "overtime." The time that the grievor worked on December 27, 2003 was not overtime.

[14] Furthermore, it is trite law that a cash benefit is payable only when it is explicitly mentioned in the collective agreement. However, that is not the case with respect to reimbursing a meal during overtime performed on a holiday.

[15] Finally, with respect to the argument based on prior practice, the employer acknowledges that meals were occasionally reimbursed under similar circumstances in the past. Those cases involved administrative errors that were corrected more than four years ago.

[16] The employer submitted the following decision to support its argument: *Cardinal Transportation B.C. Inc. v. Canadian Union of Public Employees, Local 561* (1997), 62 L.A.C. (4th) 230. He also referred me to paragraph 3:4400 of *Canadian Labour Arbitration* and to pages 136 to 139 of Palmer and Palmer, *Collective Agreement Arbitration in Canada*, 3rd ed.

IV. Reasons

[17] The issue to be decided in this case is whether the was grievor entitled, after working 3 hours following his scheduled 10.72 hours of work on the holiday of December 27, 2003, to receive the meal allowance under clause 28.09 of the collective agreement.

[18] Paragraph 7 of the agreed statement of facts states that the grievor, at the employer's request, worked three hours immediately after his scheduled hours of work for December 27, 2003. That situation corresponds perfectly to the definition of "overtime" in clause 2.01(i) of the collective agreement. The grievor thus worked three hours of overtime on December 27, 2003 immediately after his 10.72 scheduled hours of work.

[19] Clause 28.09 of the collective agreement provides that a meal allowance of $9 is to be paid to employees who work at least three hours of overtime immediately after or immediately before their scheduled hours of work. This is exactly what happened to the grievor on December 27, 2003. Accordingly, the employer should pay him a meal allowance of $9, which it did not do.

[20] The employer's reason for denying the allowance is that clause 28.09 of the collective agreement does not apply to overtime performed on a holiday because that time is paid under article 30 and not article 28. According to the employer, if the CCRA and the grievor's bargaining agent had wanted to pay the meal allowance for a holiday, a reference to clause 28.09 would have been included in clause 30.08. I do not agree. If the parties to the collective agreement had wanted to exclude payment of the meal allowance for overtime performed on a holiday, they would have made note of that in either clause 28.09 or 30.08. They did not do so.

[21] I have reviewed the case law and the doctrine submitted by the parties, and they are of little benefit in deciding the issue before me since the collective agreement appears clear to me and poses no interpretation difficulty.

[22] In view of the foregoing, there is no need to rule on the arguments of the parties pertaining to past practice.

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

(The Order appears on the next page)

V. Order

[24] The grievance is allowed.

[25] I order the employer to pay the grievor the meal allowance of $9, as provided in clause 28.09(a) of the collective agreement, for the overtime he worked on the holiday of December 27, 2003.

August 12, 2008.

PSLRB Translation

Renaud Paquet,
adjudicator