

Date: 20081104

File: 566-02-116

Citation: 2008 PSLRB 92



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

LUC MARIN

Grievor

and

**TREASURY BOARD
(Canada Border Services Agency)**

Employer

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

In the matter of an individual grievance referred to adjudication

REASONS FOR DECISION

Before: [Renaud Paquet, adjudicator](#)

For the Grievor: [Guylaine Bourbeau, Public Service Alliance of Canada](#)

For the Employer: [Sean Kelly, counsel](#)

Heard at Quebec, Quebec,
October 21, 2008.

REASONS FOR DECISION

Individual grievance referred to adjudication

[1] On May 27, 2005, Luc Marin (“the grievor”) filed a grievance against the Canada Border Services Agency (“the employer”) alleging an infringement of clause 28.09(c) of the applicable collective agreement, which was concluded between the Public Service Alliance of Canada and the Treasury Board on March 14, 2005, for the Program and Administrative Services Group (“the collective agreement”). The collective agreement expired on June 20, 2007.

[2] The employer replied at the final level of the grievance process on November 3, 2005, and the bargaining agent referred the grievance to adjudication on December 19, 2005.

[3] The facts giving rise to this grievance are not contested. The parties submitted a joint statement of facts at the hearing.

[4] The grievor was a border services officer at the Armstrong, Quebec, border crossing from September 30, 2002, to March 13, 2006. During that time, the grievor worked a schedule of 12 hours per day, including an unpaid 30-minute meal break.

[5] On several occasions during that period, the grievor worked overtime on days other than his regular workdays. When he worked overtime, the employer allowed him a 30-minute meal break. However, the meal break was unpaid. According to the grievor, in doing so the employer infringed clause 28.09(c) of the collective agreement. The grievor requests that the unpaid amounts be reimbursed to him retroactively to April 21, 2005, i.e., 25 days before the grievance was filed.

[6] Clause 28.09 of the collective agreement reads as follows:

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 ten dollars (\$10.00) except where free meals are provided.*
- (b) When an employee works overtime continuously extending four (4) hours or more beyond the period provided in paragraph (a), the employee shall be reimbursed for one additional meal in the amount of*

ten dollars (\$10.00) for each additional four (4)-hour period of overtime worked thereafter, except where free meals are provided.

- (c) Reasonable time with pay, to be determined by the Employer, shall be allowed the employee in order that the employee may take a meal break either at or adjacent to the employee's place of work.*
- (d) Meal allowances under this clause shall not apply to an employee who is in travel status which entitles the employee to claim expenses for lodging and/or meals.*

Summary of the arguments

[7] The grievor notes that the issue of meals is not mentioned in clause 28.06 of the collective agreement, which deals with overtime on a workday, or in clause 28.07, which deals with overtime on a day of rest. Only clause 28.09 deals with the matter of meals during overtime.

[8] The grievor notes that clause 28.09 of the collective agreement itself contains four clauses. The first two are interrelated and concern the reimbursement of meals. However, the third clause is not related to the first two, contrary to what the employer alleges, which is that clause (c) applies only to an employee who works under the conditions specified in the first two clauses ((a) and (b)).

[9] According to the grievor, clause 28.09(c) of the collective agreement is the only clause in all of article 28 that deals with paid meals during overtime. Nothing in that clause mentions overtime of a specific type such that the paid meal period applies. Therefore, the lack of specific conditions leads to the conclusion that clause 28.09(c) applies to all overtime situations.

[10] The grievor draws a parallel with clause 28.08 of the collective agreement, which also contains four clauses, the third of which is not conditional on the second.

[11] The employer argues that it respected the collective agreement by refusing to grant the grievor paid meal breaks when he worked overtime that was not immediately before or immediately following his scheduled hours of work.

[12] The employer notes that a clear and precise clause of the collective agreement poses no interpretation problems. In the event that the adjudicator is of the opinion

that clause 28.09(c) of the collective agreement requires interpretation, he must interpret it in a way that is most harmonious with the objective of the clause in question. The section and the title of the section in which the clause is located may also be useful in understanding its meaning.

[13] According to the employer, the structure of article 28 of the collective agreement concerning overtime helps in understanding the scope of clause 28.09(c). Exclusions and exceptions are specified in clauses 28.01 to 28.03. Clause 28.04 specifies the general provisions that apply to article 28. Clause 28.05 defines the rules for assigning overtime, clauses 28.06 and 28.07 determine compensation, and clause 28.08 determines the rules for converting remuneration into compensatory leave. Clause 28.09 deals with the payment of meals and meal breaks. Finally, clause 28.10 deals with the conditions for reimbursing transportation expenses.

[14] According to the employer, by inserting the various rules concerning meals under one heading, “Meals,” the parties intended to show that the rules are related. Therefore, a paid meal break applies only in the circumstances specified in clauses 28.09(a) and (b) of the collective agreement.

[15] The employer filed the following decisions in support of its arguments: *Côté et al. v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-02-16256 to 16258 (19870629); *Doyon v. Public Service Staff Relations Board*, [1978] 1 F.C. 31 (C.A.); *Thunder Bay (City) v. Canadian Union of Public Employees, Local 87* (2000), 86 L.A.C. (4d) 289; *Sumaling v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 32; *Canada (Treasury Board) v. Canadian Air Traffic Control Association*, [1984] F.C.J. No. 49 (QL); *Comeau v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-14716 (19850723); and *Gorrill and Richardson v. Treasury Board (Agriculture Canada)*, PSSRB File Nos. 166-02-15209 and 15211 (19870805).

Reasons

[16] The issue raised in this grievance is relatively simple. Was the grievor entitled, under clause 28.09(c) of the collective agreement, to a paid meal break when he worked overtime hours that were not immediately before or immediately following his scheduled hours of work?

[17] According to the employer, the text of clause 28.09(c) of the collective agreement is clear. A paid meal break applies only in the situations described in

clauses 28.09(a) and (b). A meal break is paid only when the employee works at least three hours of overtime immediately before or immediately following his or her scheduled hours of work. The same rule applies to the \$10 meal allowance.

[18] Certainly the text of clause 28.09(c) of the collective agreement is clear, but, as the grievor mentioned, the circumstances in which it applies may be subject to more than one interpretation. Nevertheless, I agree with the employer's position that clause 28.09(c) applies only in situations in which overtime is worked immediately before or immediately following normal hours of work according to the conditions mentioned in clauses 28.09(a) and (b).

[19] I agree with the employer's argument that when the collective agreement was negotiated, the parties intended to grant a paid meal break only in cases in which overtime is worked immediately before or immediately following scheduled hours of work. Clauses 28.09(a) and (b) of the collective agreement specify the conditions under which meals may be paid. Under clause 28.09(c), a paid meal break is allowed, and clause 28.09(d) specifies that meal allowances provided under clause 28.09 do not apply to an employee in travel status. The four clauses are grouped together in one section entitled "Meals." They constitute a coherent and inseparable whole that sets out the conditions for entitlement to a paid meal and a paid meal break in overtime situations.

[20] According to the grievor, the application of clause 28.09(c) of the collective agreement is not subject to the conditions specified in clauses 28.09(a) and (b). Such an interpretation seems simply illogical to me. It would mean that as soon as an employee were to work overtime, he or she would be entitled to a paid meal break, no matter how many hours were worked. If the parties had had that intention, they most certainly would have specified so in the collective agreement. However, that is not the case.

[21] In the situations that led to this grievance, the grievor had unpaid meal breaks when he worked overtime, but the overtime was not worked immediately before or immediately following his scheduled hours of work. Therefore, the employer was not obliged to pay him for a meal break.

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

(The Order appears on the next page)

Order

[23] The grievance is dismissed.

November 4, 2008.

**Renaud Paquet,
adjudicator**