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*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**THÉRÈSE CLOUTIER ET AL.**

Grievors

and

**CANADA REVENUE AGENCY**

Employer

Indexed as  
*Cloutier et al. v. Canada Revenue Agency*

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

**REASONS FOR DECISION**

**Before:** Michel Paquette, adjudicator

**For the Grievors:** Amarkai Laryea, Public Service Alliance of Canada

**For the Employer:** Sean Kelly, counsel

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Heard at Montreal, Quebec,  
November 5, 2008.  
(PSLRB Translation)

**Grievances referred to adjudication**

[1] In November 2003, 34 employees (“the grievors”) filed grievances against the Canada Revenue Agency (“the employer”). The grievances allege a violation of clause 25.07 of the collective agreement between the Public Service Alliance of Canada and the Treasury Board for the Program and Administrative Services Group that expired on October 31, 2003 (“the collective agreement”). Clause 25.07 reads as follows:

[Translation]

*25.07 Employees shall be informed by written notice of their scheduled hours of work. Any changes to the scheduled hours shall be by written notice to the employee(s) concerned. The employer shall endeavour to give seven days' notice of a change to an employees' scheduled hours of work.*

[2] The employer responded at the final level of the grievance process on or about September 21, 2005. The grievances were referred to adjudication on December 8, 2005.

[3] 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*, these references 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.

**Summary of the evidence**

[4] The facts on which these grievances are based are not contested since the parties adduced the following joint statement of facts at the hearing:

[Translation]

...

***JOINT STATEMENT OF FACTS***

*The parties agree on the following statement of facts:*

***Shawinigan-Sud Tax Centre***

- 1. In 2003, the Canada Revenue Agency (“the Agency”) hired a number of term employees to process Corporation*

*Income Tax Returns (T2s) at the Shawinigan-Sud Tax Centre.*

- 2. The scheduled hours of work for the term employees were seven-and-a-half (7 1/2) consecutive hours, except for one unpaid meal break, from Monday to Friday. Specifically, the scheduled hours of work for most of these employees were from 07:00 to 15:00 or from 07:15 to 15:15 (including the unpaid meal break), from Monday to Friday. These employees do not work shifts.*
- 3. The term employees' duties required continuously using the computerized income-tax-return processing system.*

*October 27, 2003*

- 4. On October 27, 2003, the grievors were all term employees occupying various positions in the CR-02, CR-04, PM-01 or DA-CON-02 groups and levels at the Shawinigan-Sud Tax Centre.*
- 5. On October 27, 2003 at about 07:00, a defective part caused a breakdown in the computerized income-tax-return processing system at the Shawinigan-Sud Tax Centre ("the breakdown").*
- 6. At about 09:30, the Agency assigned other tasks or duties, not requiring the use of the computerized income-tax-return processing system, to a number of (term and indeterminate) employees at the Shawinigan-Sud Tax Centre.*
- 7. As well, at about 09:30, some term employees, including in particular, the grievors, were notified verbally that they would be placed on off-duty status for the rest of the day of October 27, 2003. The Agency paid the term employees for the hours of work during which they were present at the Shawinigan-Sud Tax Centre. As well, the Agency allowed them to use accumulated hours, unpaid leave or annual leave for the rest of the day of October 27, 2003.*
- 8. The breakdown ended on October 27, 2003 at about 16:30.*
- 9. On all other days in October 2003, the term employees, including the grievors in particular, worked their normally scheduled hours of work.*

The grievances

10. In November 2007 [sic], the grievors filed grievances alleging that the Agency violated clause 25.07 of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Program and Administrative Services Group signed on March 22, 2002 (expiry date: October 31, 2003).

11. On or about September 21, 2005, the grievances were dismissed at the final level of the grievance settlement procedure.

...

Summary of the arguments

[5] The grievors' representative argued that clause 25.07 of the collective agreement is clear and unambiguous. He further argued that the employer's decision to place the grievors on off-duty status for part of the day of October 27, 2003 constituted a change to the scheduled hours of work and that, since the grievors had not received seven days' written notice, it constituted a violation of the collective agreement. The grievors therefore request a ruling that the collective agreement was not respected. They also request that they be remunerated for unpaid hours on October 27, 2003, that the decision to place them on off-duty status be ruled invalid and that I allow their grievances.

[6] The grievors' representative referred to *Canadian Labour Arbitration* by Brown and Beatty with respect to, among other things, the meaning and interpretation to be given to the wording of a collective agreement. He cited *United Automobile Workers, Local 1213, re Cockshutt Aircraft Ltd.* (1955), 5 L.A.C. 2087, and *Brisson and Dubeau v. Canadian Food Inspection Agency*, 2005 PSLRB 38.

[7] In addition, counsel for the employer indicated that although the wording of clause 25.07 of the collective agreement is clear and unambiguous, it is not applicable in this case. He argued that clause 25.07 applies only when there is a permanent change to the scheduled hours of work set out in clause 25.06. The employer has the authority to manage its resources and is thus entitled to place its employees on off-duty status, as confirmed in *Brescia v. Canada (Treasury Board)*, 2005 FCA 236. Counsel for the employer also cited additional decisions with respect to the meaning to be given to the wording of a collective agreement.

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**Reasons**

[8] The facts, as set out in the joint statement of facts, are clear. At issue is whether placing the grievors on off-duty status for a few hours on October 27, 2003 constitutes a change to the scheduled hours of work set out in clause 25.07 of the collective agreement.

[9] It must first be established whether the employer was authorized to place the grievors on off-duty status. To that end, the legislative framework must be identified. Sections 30 and 50 of the *Canada Revenue Agency Act* confer very clear authority over human resources management:

*GENERAL AUTHORITY OF THE AGENCY*

*Matters over which the Agency has authority*

*30. (1) The Agency has authority over all matters relating to*

- (a) general administrative policy in the Agency;*
- (b) the organization of the Agency;*
- (c) Agency real property and Agency immovables as defined in section 73;*
- (d) human resources management, including the determination of the terms and conditions of employment of persons employed by the Agency; and*
- (e) internal audit in the Agency.*

*Treasury Board regulations*

*(2) Notwithstanding the Financial Administration Act, the Agency is not subject to any regulation or requirement established by the Treasury Board under that Act that relates to any matter referred to in subsection (1), except in so far as any part of the regulation or requirement relates to financial management.*

*1999, c. 17, s. 30; 2001, c. 4, s. 129; 2003, c. 22, s. 96; 2006, c. 9, s. 237.*

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## HUMAN RESOURCES

### *Separate agency*

**50.** *The Agency is a separate agency under the Public Service Labour Relations Act.*

*1999, c. 17, s. 50; 2003, c. 22, s. 97.*

[10] In addition, the collective agreement structures or attenuates that management authority, as confirmed by clause 6.01:

## ARTICLE 6

### MANAGERIAL RESPONSIBILITIES

**6.01** *Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the Public Service.*

[11] Clause 25.02 of the collective agreement should also be noted:

[Translation]

**25.02** *Nothing in this Article shall be construed as guaranteeing minimum or maximum hours of work. In no case shall this permit the Employer to reduce the hours of work of a full-time employee permanently.*

[12] I therefore find that the employer was authorized to place the grievors on off-duty status, as does the Federal Court of Appeal in *Brescia*:

...

*[50] I find that the wide powers conferred on the Treasury Board and its delegates under paragraphs 7(1)(e) and 11(2)(a) and (d) of the FAA and articles 6.01 and 25.01 of the applicable collective agreement are grants of authority which allowed the Commission to place the appellants on an off-duty status without pay. Specifically, the Treasury Board under paragraph 7(1)(e) is given authority over "personnel management in the public service, including the determination of the terms and conditions of employment of persons employed"; under paragraph 11(2)(a), it may provide for their effective utilization; under paragraph 11(2)(d), it may determine and regulate the pay, the hours of work and leave, and any matters related thereto. These last words would cover the procedure followed for the release and the recall of employees. Moreover, under the collective agreement, the managerial responsibilities*

*remain unrestricted, unless provided to the contrary. The employee is given no guarantee with regard to his minimum or maximum hours of work.*

...

[13] Although this case does not involve the same employer, the legislative framework and the agreements are similar.

[14] At issue is whether the off-duty status constituted a change to the scheduled hours of work, in which case the employer was required to inform the grievors in writing and, if possible, to give them seven days' notice.

[15] Article 25 of the collective agreement deals with hours of work. It is subdivided into clauses on general matters, day work, shift work and conditions governing the management of variable work hours.

[16] According to clause 25.06 of the collective agreement, the normal work week is 37 1/2 hours from Monday to Friday, and the normal working hours for the grievors are seven-and-a-half (7 1/2) consecutive hours between 07:00 and 18:00.

[17] The employer has the authority to schedule hours of work in accordance with the conditions set out in clause 25.06 of the collective agreement.

[18] These scheduled hours of work for a fixed period are to remain in place until there is a change.

[19] What constitutes a change?

[20] If, because of operational requirements, the employer now wishes the work to be performed from 08:00 to 16:00 instead of from 07:00 to 15:00 for a fixed period, in the my opinion the seven days' notice is applicable, thus allowing the employees concerned to adjust their personal lives accordingly.

[21] If the employer does not intend to change the scheduled hours of work, but an inopportune incident beyond its control lasting for a few hours requires it to change the scheduled hours of work temporarily, in my opinion it is impossible to give the seven days' notice, and thus clause 25.07 of the collective agreement is not applicable.

[22] In *Hodgson v. Canada (Attorney General)*, 2006 FC 428, the Federal Court addresses this issue, at paragraph 24:

*With regards to clause 25.02, the Board concluded the following:*

*This clause does not refer to hours of work, but “a schedule of working hours”. A schedule is the way that hours and days of work are organized. As stated in Tornblom (supra), a schedule is a written document. The Concise Oxford Dictionary (10th ed.) defines “schedule” as “a usually written plan . . . for future procedure typically indicating the objectives proposed, the time and sequence of each operation. . .” In French, the collective agreement refers to “l’horaire du travail” as “répartition des heures de travail à l’intérieur d’une période donnée: journée, semaine ou mois.” A schedule can therefore be regarded as a distribution of hours of work within a fixed period. The collective agreement elsewhere reinforces this interpretation of a schedule as a fixed period by referring to the “life of a schedule” (clause 25.12(b)). I conclude, therefore, that this clause applies solely to proposed changes in the allocation of hours and days of work over a fixed period. In other words, discussion is required when the employer proposes to change a schedule of shifts or days of rest. It does not cover the situation where employees are transformed from “day workers” to “rotating or irregular” workers.*

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

*(The Order appears on the next page)*



**Order**

[24] The grievances are dismissed.

January 20, 2009.

PSLRB Translation

**Michel Paquette,  
adjudicator**