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Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

ROBERT TUCKETT-REDDY

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Tuckett-Reddy v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Grievor: Andrea Tait, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Employer: Allison Sephton, counsel

Decided on the basis of written submissions
filed September 16 and October 7, 21 and 24, 2011.

I. Individual grievances referred to adjudication

[1] Between March 27 and April 28, 2008, Robert Tuckett-Reddy ("the grievor") filed 13 grievances alleging that the Correctional Service of Canada ("the employer") violated the collective agreement because it failed to offer him overtime work. The grievor is a level II correctional officer (CX-02) working at the Grierson Centre, a minimum-security institution located in Edmonton, Alberta. The applicable collective agreement was signed on June 26, 2006, by the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the union"), for the Correctional Services (CX) bargaining unit ("the collective agreement").

[2] The 13 grievances are not worded exactly the same but have the same meaning. The grievor alleges that the employer decided on those 13 occasions to have Correctional Manager (CM) M. Mundell, a CX-03, work as a CX-02. Those decisions deprived the grievor of 13 opportunities to work an overtime shift. The grievor claims pay for those missed overtime shifts. He also asks that the employer rectify the situation by no longer keeping Mr. Mundell on the roster as a replacement for a CX-02. The grievor alleges that the employer violated clauses 21.10(a) and (b) of the collective agreement. Those provisions read as follows:

> ***21.10 Assignment of Overtime Work***
>
> *The Employer shall make every reasonable effort:*
>
> *(a) to allocate overtime work on an equitable basis among readily available qualified employees,*
>
> *(b) to allocate overtime work to employees at the same group and level as the position to be filled, i.e.: Correctional Officer 1 (CX-1) to Correctional Officer 1 (CX-1), Correctional Officer 2 (CX-2) to Correctional Officer 2 (CX-2) etc.;*
>
> *However, it is possible for a Local Union to agree in writing with the Institutional Warden on an* [*sic*] *another method to allocate overtime.*

[3] In its first-level reply, the employer admitted that a temporary CX-02 vacancy needed to be staffed at the Grierson Centre. At the relevant time, Mr. Mundell was available to fill that vacancy. The employer admitted that Mr. Mundell performed CX-02 work. However, he did not work overtime on the dates specified in the 13

grievances. The employer did not reply to the grievances at the second and at the third (final) levels of the grievance process.

[4] The grievor admits that Mr. Mundell was not paid overtime to do the work on the dates in question and that he worked at straight time on his scheduled days of work. However, according to the grievor, Mr. Mundell continued to wear his CM uniform throughout the time in question, and he stated to some employees that he continued to be paid as a CM while assigned CX-02 duties at Grierson Centre.

II. Summary of the arguments

A. For the grievor

[5] According to the grievor, the following issues need to be addressed:

> *a) When the employer has an operational need to replace a CX-2, must he fill that need with an officer of the same title/rank, that being a CX-2?*
>
> *b) And if so, then the employer would have paid overtime in this case and the employer would have been obligated to proceed according to the collective agreement article 21 for the equitable distribution of overtime.*
>
> *c) Therefore, Officer Tuckett-Reddy would have been available and entitled to work the dates in question?*

[6] The grievor argued that the employer violated the collective agreement when it filled a CX-02 vacancy with a CM who was classified at the CX-03 group and level and who was not part of the bargaining unit. As a result, the grievor was not called for overtime for the dates in question.

[7] The grievor argued that the employer has not fulfilled its obligations to maintain good relations with the union as per article 1 of the collective agreement by using a CM to do the work of a CX-02. The employer decided to have Mr. Mundell, a CX-03, replace a CX-02 for a certain period and perform his duties. The collective agreement covers only CX-01 and CX-02 employees. This is clearly stated in article 7 and in Appendix “E”. Persons who occupy CM positions or who are classified at the CX-03 group and level are excluded from the collective agreement and are not employees as defined in clause 2.01(g). The doctrine also states that supervisors are restricted from working in the bargaining unit. On that point, the grievor referred me

to paragraphs 5:1410 and 5:1430 of Brown and Beatty, *Canadian Labour Arbitration,* 4th edition.

[8] Because CX-03s are expressly excluded from the bargaining unit, the employer had no option but to call a CX-02 for overtime to fill the CX-02 vacancy. The grievor had indicated that he was available to work overtime on the days in question, and according to clause 21.10 of the collective agreement, he should have been called to work those shifts on overtime.

[9] The grievor argued that numerous adjudication decisions have interpreted clause 21.10 of the collective agreement and have supported the principle of the equitable distribution of overtime. On that point, the grievor referred me to *Weeks v. Treasury Board (Correctional Service of Canada)*, 2010 PSLRB 132; and *Bucholtz et al. v. Treasury Board (Correctional Service of Canada)*, 2010 PSLRB 111.

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

[10] The employer argued that it simply exercised its broad management rights when it temporarily staffed a CX-02 position with a CX-03. Mr. Mundell did not work any overtime when he temporarily worked as a CX-02. Consequently, clause 21.10 of the collective agreement did not apply since no overtime was offered. The temporary assignment of CX-02 work to a CX-03 was done within management's right to organize the workplace. Those rights are granted by the collective agreement and by the *Financial Administration Act*, R.S.C. 1985, c. F-11 ("the *FAA*").

[11] It is well established that there is no concept of "bargaining unit work" or ownership over particular work within the federal public service. The Treasury Board, as the employer of public servants, is granted broad management rights, including assigning duties as it sees fit, unless expressly limited by statute or by a collective agreement.

[12] The jurisprudence has consistently upheld the employer's right to manage the workplace. On that point, the employer referred me to *Peck v. Parks Canada*, 2009 FC 686, and to *Brescia et al. v. Canada (Treasury Board) and Canadian Grain Commission*, 2005 FCA 236. The employer also referred me to the two following related decisions: *Cianni et al. v. Treasury Board (Solicitor General Canada – Correctional Service)*, 2004

PSSRB 98; and *Purchase v. Treasury Board (Correctional Service of Canada)*, 2005 PSLRB 67.

III. Reasons

[13] In his grievances, the grievor raised that he should have been offered overtime. However, first at issue is the employer's right to fill a CX-02 temporary vacancy with a person who is not a member of the bargaining unit, in this case a correctional manager classified at the CX-03 level. The overtime issue comes as a consequence of that first issue. If I conclude that the employer did not violate the collective agreement when it filled a temporary CX-02 vacancy with a CM working his regular hours, then the overtime issue does not arise, as Mr. Mundell did not work any overtime on the 13 shifts for which grievances were filed.

[14] I agree with the grievor's submission that, according to Appendix "E" and article 7 of the collective agreement, a CX-03 correctional manager is not an employee as defined in clause 2.01(g). Those provisions of the collective agreement read as follows:

> ***2.01*** *For the purpose of this Agreement:*
>
> . . .
>
> *(g) "**employee**" means a person so defined in the* Public Service Labour Relations Act*, and who is a member of one of the bargaining units specified in Article 7 (employé-e);*
>
> . . .
>
> ***7.01*** *The Employer recognizes the Union as the exclusive bargaining agent for all employees described in the certificate issued by the Public Service Labour Relations Board on the thirteenth (13th) day of March 2001, covering employees of the Correctional Group whose duties do not include the supervision of other employees.*
>
> . . .
>
> ***Appendix "E"***
>
> . . .
>
> *For the duration of this collective agreement, there shall be an exclusion of all positions classified either CX-03 or CX-04 in the bargaining unit described as being composed of "all the Employer's employees in the Correctional Services group, as defined in Part I of the Canada Gazette for March 27, 1999."*

[15] The fact that Mr. Mundell was classified at the CX-03 group and level is not contested. It is also not contested that he normally supervised employees in his substantive CX-03 position. Thus, it is clear that he was not an employee as defined by the collective agreement and that he was not a member of the bargaining unit.

[16] With the exception of the overtime clause, nothing in the collective agreement limits the employer's right to assign work performed by a CX-02 to a CX-03 who is not an employee as defined by the collective agreement or who is not a member of the bargaining unit. In overtime situations, as per clause 21.10, the employer has to make every reasonable effort to allocate overtime at the same group and level. That clause restricts the employer's right to assign work at a different group and level.

[17] The employer submitted that Mr. Mundell did not work any overtime when he temporarily worked as a CX-02. The grievor admitted that Mr. Mundell was not paid overtime on the dates referred to in the 13 grievances. Considering that nothing in the collective agreement forces the employer to assign work at straight time at the same group and level, the employer legally exercised its management rights when it decided to temporarily assign Mr. Mundell to perform CX-02 duties rather than to ask a CX-02, including the grievor, to perform those duties on overtime. Those rights are expressed in clause 6.01 of the collective agreement. They are also stated in subsection 11.1(1) of the *FAA* which reads in part as follows:

> ***11.1*** *(1) In the exercise of its human resources management responsibilities under paragraph 7(1)*(e)*, the Treasury Board may*
>
> *(*a*) determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service . . . .*
>
> . . .

[18] The right to assign duties to managers or unionized employees is a management right that is limited only by statute and the collective agreement. In this case, nothing in the law or in the collective agreement limits the employer's right to assign CX-03 managers at straight time to temporarily replace, as was the case, CX-02 unionized employees.

[19] The grievor referred me to *Weeks* and *Bucholtz et al.* Those decisions deal with the allocation of overtime among employees. They are of no use in deciding the

present grievances since no overtime was worked by Mr. Mundell when he performed CX-02 work. Rather, the present grievances can be compared to *Purchase*, in which the adjudicator decided that the assignment of CX-03 employees to CX-01 or CX-02 shifts did not violate the overtime provisions of the collective agreement. I agree with that decision. I also agree with the employer's argument that there is no concept of "bargaining unit work" or ownership over particular work within the legal framework of the collective agreement. In the absence of such a concept, the employer has the right to assign duties as it sees fit, unless expressly limited by the collective agreement. As a consequence, it did not violate the collective agreement in the assignment of work. Furthermore, because CM Mundell did not work the 13 shifts in question on overtime, the issue of potential violation of the overtime clause does not arise.

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

(The Order appears on the next page)

IV. Order

[21] The grievances are dismissed.

November 1, 2011.

Renaud Paquet,
adjudicator