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Citation: 2011 PSLRB 26



Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

DENIS ALLARD, CARMEL BARON, LOUISE HICKS, KARL DAVID KITCHEN, MICHELLE
ROZKA, CARRIE SMOLAK AND CAROL ANN YATES

Grievors

and

TREASURY BOARD
(Department of Citizenship and Immigration)

Employer

Indexed as

Allard et al. v. Treasury Board (Department of Citizenship and Immigration)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Deborah M. Howes, adjudicator

For the Grievors: John Haunholter, counsel, and Carm Chan, Public Service Alliance
of Canada

For the Employer: Doreen Mueller, counsel, and Shannon Ross, labour relations
advisor

Heard at Vegreville, Alberta,
September 23 to 25, 2009 and April 13, 2010, and
written submissions filed April 29, May 12 and 25, 2010.

REASONS FOR DECISION

Individual grievances referred to adjudication

[1] Denis Allard, Carmel Baron, Louise Hicks, Karl David Kitchen, Michelle Rozka, Carrie Smolak and Carol Ann Yates (“the grievors”) claimed payment for overtime opportunities denied to them since 2007. They relied on clause 28.05(a) of the collective agreement between the Treasury Board and the Public Service Alliance of Canada (PSAC) for the Program and Administrative Services Group (expiry date June 20, 2007; “the collective agreement”). The clause reads as follows:

28.05 Assignment of Overtime Work

(a) Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.

[2] The Department of Citizenship and Immigration (“the employer”) disputed the grievances, arguing that the grievors did not qualify for the overtime because they failed to meet production quotas before the overtime opportunities arose.

Are employees “qualified”?

[3] On the final day of the hearing, the parties informed me they had reached a partial resolution of the items in the grievances and asked me to make certain findings. Based on the agreement of the parties, I find as follows on the merits of the overtime claims.

[4] The employer conceded the merits of the grievances. As a result, the parties agreed and I find that the word “qualified,” as used in clause 28.05 of the collective agreement, does not mean meeting a standard of production set by the employer.

[5] The parties agreed in writing to the damages payable to each grievor for the lost overtime opportunities based on the following principles:

- i. If the grievor was on leave, he or she is deemed not to have been available to work any overtime offered between the date at issue in the relevant grievance and April 13, 2010.
- ii. If the grievor was receiving Workers’ Compensation Board benefits, he or she is deemed not to have been available to work any overtime offered between the date at issue in the relevant grievance and April 13, 2010.

- iii. If the grievor was in an “English Essential” position and the overtime offered was for bilingual processing, he or she is deemed not to have been available to work any overtime offered between the date at issue in the relevant grievance and April 13, 2010.
- iv. If the grievor actually worked the overtime offered and was paid for it, he or she is deemed not to have been entitled to double compensation for any overtime offered between the date at issue in the relevant grievance and April 13, 2010.
- v. The grievors will also receive the applicable meal allowances under clause 28.09 of the collective agreement.

Compensation for humiliation

[6] This leaves only one remaining item for me to decide in these cases, which is the claim for compensation due to humiliation in the workplace suffered by the grievors from how the employer scheduled overtime.

[7] The grievors claim that they should receive compensation for the embarrassment and humiliation that they suffered from the employer’s practice of posting the overtime sign-up sheet outside the team leader’s office.

[8] The evidence about the posting practice is quite narrow. I have summarized my findings from the evidence as follows.

[9] The workplace is divided into different teams. As part of the employer’s established practice of notifying employees of overtime, team leaders post overtime opportunity sheets outside their offices outlining the days and times of the overtime opportunities. Interested employees write their names and contact information on the sheets. All other employees on the team can see the sheets. If an employee changes his or her mind about working overtime or a team leader determines that an employee is not eligible to work the overtime, the team leader draws a line through the employee’s name on the relevant sheet. A team leader may draw a line through a name while the sheet is still posted or after the sheet is taken down at the end of the day. By the end of the day, the sheet is taken down and is used by the team leader to confirm the overtime. It is not reposted. After the sheet is taken down, the team leader may also add notes to it.

[10] The grievors felt humiliated when their names were crossed off the list. They all knew that it meant that the employer had decided that they had not met the production standard. Some did not apply for overtime opportunities again to avoid future humiliation.

[11] The PSAC argues that the employer's treatment of the grievors caused them individual distress and left them without the rights established in two previous adjudication decisions, of which the employer would have been aware. See *Foote v. Treasury Board (Department of Public Works and Government Services)*, 2009 PSLRB 142, and *Bunyan et al v. Treasury Board (Department of Human Resources and Skills Development)*, 2007 PSLRB 85. The grievors state that the employer's practice humiliates them when their names are crossed off the posted list if they are not eligible for overtime because they view it as the employer telling other employees that their work performance is subpar. Since an employer would not rebuke or criticize an employee in front of other co-workers, it should not disrespect employees by striking their names from the overtime sign-up sheet. To support the claim for damages, the PSAC relies on the following four cases: *Deschamps et Commission des droits de la personne du Québec c. 2755-9046 Québec Inc.*, [1993] J.T.D.P.Q. no. 27 (QL); *Teamsters Local Union No. 31 v. Beachcomber Hot Tubs Inc.*, 176 L.A.C. (4th) 1; *Saskenergy Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 649*, 176 L.A.C. (4th) 55; and *Malyj v. Treasury Board (Employment and Immigration Canada)*, PSSRB File No. 166-02-21439 (19920406).

[12] The employer disputes the claim for compensation for humiliation for two reasons. First, it states that the adjudicator has no authority to award such a remedy. Second, there are no grounds to make such an award.

[13] I dismiss the grievors' claim for compensation for humiliation because there are no grounds to support such a remedy. Team leaders have two known reasons for crossing an employee's name off the sheet. Team leaders do not make notes that identify the reason that applied to a given employee. Only the team leader and the applicable employee know the reason. Other employees do not know the reason applicable to any employee unless the employee in question informs another employee. The final overtime sheet only conveys who will work the overtime, not why other persons will not. Employees are left to draw their own conclusions about crossed-out names. In these cases, the employer made no action or statement that was

intended to discredit or could reasonably have discredited an individual employee unless the employee revealed information to his or her co-workers. If employees were embarrassed by discussing a given overtime situation with their co-workers, the employer cannot be held liable for that embarrassment. As a result, I find no basis for a reasonable source of humiliation for the grievors.

[14] With that finding, I do not need to decide the employer's authority argument.

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

(The Order appears on the next page)

Order

[16] The grievances are allowed to the extent agreed to by the parties.

[17] There will be no award to compensate the grievors for the humiliation they claim to have suffered.

February 25, 2011.

**Deborah M. Howes,
adjudicator**