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Citation: 2014 PSLRB 3

Public Service
Labour Relations Act

Before an adjudicator

BETWEEN

TARA HARRISON AND RUSSELL KIRBY

Grievors

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
Harrison and Kirby v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

REASONS FOR DECISION

Before: Stephan J. Bertrand, adjudicator

For the Grievors: Jack Haller, counsel

For the Employer: Pierre-Marc Champagne, counsel

Heard at Moncton, New Brunswick,
October 9 and 10, 2013.

I. Individual grievances referred to adjudication

[1] Tara Catherine Harrison and Russell Kirby ("the grievors") are correctional officers employed by the Correctional Service of Canada (CSC or "the employer") who have filed three grievances related to shift exchange requests that were denied by the CSC. Two of these grievances, one filed by Ms. Harrison that bears file number 566-02-5722, and the other filed by Mr. Kirby that bears file number 566-02-5721, are related to the same shift exchange request. The third grievance, which bears file number 566-02-5723, pertains to another shift exchange request involving Ms. Harrison and another correctional officer who is not a party to these grievances.

[2] All three grievances relate to clause 21.05 of the agreement between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada – CSN ("the bargaining agent") for the Correctional Services group that expired on May 31, 2010 ("the collective agreement"). That clause reads as follows:

> ***21.05***
>
> *(a) Provided sufficient advance notice is given and with the approval of the Employer, employees may exchange shifts if there is no increase in cost to the Employer.*
>
> *(b) On an approved exchange of shifts between employees, the Employer shall administer the shift schedule as if no exchange had occurred.*

[3] The grievances were denied by the CSC at each level of the grievance process and were eventually referred to adjudication by the grievors.

II. Summary of the evidence

[4] Mr. Kirby testified that he has been employed with the CSC for seven years as a CX-01 correctional officer and that he has rarely requested shift exchanges with other CX officers. On March 31, 2011, he submitted a shift exchange request form to his manager, which provided that Ms. Harrison would replace him and work his scheduled shifts on April 4 and 5, 2011, and that he would in turn replace her and work her scheduled shifts on May 11 and 12, 2011. That shift exchange request was initially denied by Mr. Kirby's manager and subsequently at all levels of the grievance process, on the basis that it would have resulted in Mr. Kirby having to work more than one 16-hour shift in a 5-day work cycle, contrary to Appendix "K" of the collective

agreement, to the CSC's "Policy Bulletin #2006-12(2)" and to a "Regional Shift Exchange Policy" issued by the Acting Assistant Deputy Commissioner, CSC Institutional Operations, on February 8, 2011.

[5] While he acknowledged that he would have been required to work two 16-hour shifts during the shift cycle commencing on May 7, 2011, Mr. Kirby indicated that those two 16-hour shifts would not have been consecutive and that no cost would have been incurred by the employer since the requested exchange provided for an equivalent number of hours of work. According to Mr. Kirby, the employer's denial of this shift exchange contravened clause 21.05 of the collective agreement since the requested shift exchange would have resulted in no increase in cost to the employer.

[6] Mr. Kirby also testified that employees could volunteer to work overtime during a shift cycle and that, as a result, they would often work more than one 16-hour shift, sometimes as many as four, in one shift cycle. According to him, that fact contradicted the employer's reasons for denying his shift exchange request.

[7] Mr. Kirby added that the fact that Appendix "K" of the collective agreement provided that only one 16-hour shift would normally be scheduled into an employee's shift cycle by management, it did not prohibit him from working more than one 16-hour shift in one shift cycle, once again referring to the overtime scenario as an example. According to him, clause 21.05 provides a certain flexibility by allowing employees to alter their own shift cycles without having to request annual leave.

[8] When he completed his testimony, Mr. Kirby asked to be excused from the proceedings, indicating that personal engagements prevented him from continuing to attend. He voluntarily waived his right to be present during the remaining portion of the proceeding and authorized his representative, Mr. Haller, to continue to represent him in his absence.

[9] Ms. Harrison also testified. She confirmed that she had requested a shift exchange with Mr. Kirby, that the proposed exchange would have resulted in both of them having to work two 16-hour shifts in one work cycle and that the employer denied the request on March 31, 2011. Neither Ms. Harrison nor Mr. Kirby could recall the reason for requesting this shift exchange.

[10] According to Ms. Harrison, the employer's denial of those shift exchanges and its reliance on CSC Bulletin # 2006-12(2) and the Regional Shift Exchange Policy violated clause 21.05 of the collective agreement, since the employer would have incurred no increase in cost as a result of the grievors having to work two 16-hour shifts in one work cycle. Her position that no increased costs would have been incurred was not contradicted by the employer at the hearing.

[11] Ms. Harrison testified that although she had been informed during a labour-management meeting that shift exchange requests were increasing the workload of scheduling managers, no corresponding cost increase was ever raised by the employer at that meeting; nor was any evidence of such an increase provided to her at any time.

[12] According to Ms. Harrison, her shift exchange request with Mr. Kirby did not contravene CSC Bulletin # 2006-12(2) since it did not result in either of them having to work consecutive 16-hour shifts and since it could have been said that either of them routinely or regularly attempted to compress long work cycles into shorter ones.

[13] Ms. Harrison testified that rather than submitting an annual leave request, which could have resulted in the employer having to pay overtime to another employee, the proposed shift exchange with Mr. Kirby would have resulted in no such additional cost to the employer and hence would have been beneficial to the CSC.

[14] With respect to her second grievance (566-02-5723), Ms. Harrison testified that on May 6, 2011, a shift exchange request was submitted to the employer, which provided that she would work the scheduled 12.75-hour shift of another CX-01 officer on May 26, 2011, that that employee would work 12.75 hours of her scheduled 16-hour shift on June 18, 2011, and that she would request annual leave for the remaining 3.25 hours of her June 18, 2011, shift. That shift exchange request was denied by the employer, and Ms. Harrison grieved that denial.

[15] According to the documentation filed by Ms. Harrison (Exhibits G-9 to G-11), the employer originally denied the shift exchange request on the ground that the difference between the two shifts being exchanged (in this case 12.75 hours and 16 hours) exceed two hours, which was prohibited by the Regional Shift Exchange Policy. However, in its second-level grievance decision, the employer indicated that Ms. Harrison's grievance was being denied on the ground that increased cost to the

employer would occur as a result of having to manipulate the electronic scheduling system to accommodate the request, as the system did not allow such an exchange without a significant amount of work. Ultimately, in its final-level grievance response, the employer repeated that the requested shift exchange was not permitted by the Regional Shift Exchange Policy and that its Scheduling and Deployment System (SDS) did not allow the entry of such exchanges, this time without alleging any increased costs of any kind.

[16] Ms. Harrison also testified that a similar shift exchange request with the same CX-01 employee, one that also resulted in a 3.25-hour differential, had been approved by the employer a few weeks before she submitted her May 6, 2011, request. In cross-examination, she was unable to provide an exact date for that prior request or to confirm how the 3.25-hour differential had been dealt with, i.e., through an annual leave request. The employer, which undertook at the hearing to look for documentation pertaining to this shift exchange, could not find any documentation in its records to confirm Ms. Harrison's evidence.

[17] Ms. Harrison admitted that her second grievance (566-02-5725) could have resulted in overtime costs to the employer in order to cover the 3.25-hour differential in that shift exchange request, but she indicated that, in her view, the potential overtime cost would have resulted from her annual leave request rather than from the shift exchange request. She added that her annual leave request for the 3.25-hour differential would not necessarily have resulted in overtime costs, since the employer could have operated with less staff and since additional substitute correctional officers were regularly on duty and hence were available to cover such shortages.

[18] David Harrison also provided brief testimony on behalf of the grievors. At the relevant time, he was part of the bargaining agent's local executive team, either as a shop steward or as a vice-president. He indicated that during the past 14 years, he had submitted 2 to 3 shift exchange requests per year, all of which had been approved by the employer. He also testified that no one from management had ever mentioned to him that processing shift exchange requests resulted in additional costs to the employer.

[19] Dale Lawson testified on behalf of the employer. Mr. Lawson is Acting Senior Project Officer for Scheduling and Deployment with the CSC's Atlantic Region. He indicated that before issuing the Regional Shift Exchange Policy on February 8, 2011,

the CSC had taken into account information and data he had collected as part of a consultation process with his regional counterparts and correctional managers across the country. According to Mr. Lawson, the four restrictions contained in the Regional Shift Exchange Policy originated from recommendations he had made to the Acting Assistant Deputy Commissioner of Institutional Operations following that consultation process, which endeavoured, in part, to achieve a nationwide consistent approach to dealing with shift exchanges.

[20] Mr. Lawson indicated that a number of changes had taken place since the Policy Bulletin # 2006-12(2) had been issued in March 2007, including the implementation of the SDS in September 2009, which had a number of built-in restrictions. For example, the SDS would not allow its users to enter a shift exchange if the difference in shift hours was greater than two; nor would it allow shift exchanges between classifications.

[21] According to Mr. Lawson, the information he received from his regional counterparts confirmed that none of the other regions allowed shift exchanges that resulted in an employee having to work more than one 16-hour shift in a work cycle, none allowed shift exchanges of more than a 2-hour difference between the 2 shifts, specifically exchanges between 12.75-hour and 16-hour shifts, and none allowed shift exchanges between different classifications. For the sake of consistency, he recommended to the Acting Assistant Deputy Commissioner that a similar policy be implemented in the CSC's Atlantic Region.

[22] When asked whether he felt his recommendations were in line with clause 21.05 of the collective agreement, Mr. Lawson stated that, in his view, they were. For example, with respect to the two-hour differential restriction, he indicated that correctional officers were normally scheduled to work shifts that varied in length, including 8.0, 8.5, 8.75, 9.0, 10.0, 12.5, 12.75 and 16 hours. The resulting maximum overlap when scheduling work cycles usually varied between 1.5 - 2.0 hours. This meant that if an employee was two hours late or was not covered for two hours as a result of a shift exchange, the overlap of available employees still at the worksite would ensure that the institution was adequately staffed. However, anything above and beyond the two-hour overlap created a shortfall, which could be covered only by assigning other unscheduled employees to the vacant posts and that ultimately resulted in overtime costs. While he admitted that substitute officers were built into the scheduling of work cycles, Mr. Lawson indicated that the intended purpose was not

to allow employees to alter their work schedules but rather to cover scheduled leave known to the employer during the scheduling process, unscheduled leave, employees on training and tardiness.

[23] With respect to the 16-hour shift restriction, Mr. Lawson testified that it was consistent with the wording of Appendix "K" of the collective agreement and that it addressed staff safety. For example, he alluded to the possibility of the employer having to request on short notice that an employee work overtime for operational purposes and to the fact that if that employee had already completed more than one 16-hour shift in his or her shift cycle as a result of shift exchanges, then that employee would likely be less willing or able to volunteer for the overtime, as fatigue and alertness could come into play. Mr. Lawson admitted in cross-examination that correctional officers could work as many as four 16-hour shifts in one work cycle if required to work overtime for operational purposes but insisted that when managing its operations, the employer had to ensure that it met its business needs and responsibilities and that correctional officers could always refuse overtime.

III. Summary of the arguments

A. For the grievors

[24] The grievors argued that two conditions must be met to obtain the employer's approval for a shift exchange. First, sufficient advance notice must be given to the employer by the employees wishing to exchange shifts. Second, the proposed shift exchange must not result in an increase in cost to the employer. According to the grievors, since both conditions were met in the three shift exchange requests related to these grievances, the employer's refusal to approve the requests violated clause 21.05 of the collective agreement.

[25] The grievors contended that since no suggestion had been made that they had provided insufficient notice, the employer's failure to demonstrate how the shift exchange requests in question had resulted in an increase in cost precluded it from justifying its denials on other grounds. The grievors specifically pointed to the lack of evidence establishing overtime costs to process the shift exchange request from a managerial perspective or overtime costs resulting from having to cover shift exchange differentials. According to the grievors, clause 21.05 of the collective agreement clearly creates a link between the notice and the cost, on the one hand, and the employer's

approval, on the other hand. In other words, the employer's approval must be provided if sufficient notice is given and if it incurs no increase in cost.

[26] With respect to the shift exchange request that resulted in a differential of more than two hours, the grievors argued that the employer had established a practice of granting shift exchanges in the past and that it was estopped from attempting to change the rules by imposing a new nationwide restriction. In addition to arguing past practice, the grievors added that the fact that the employer had granted a practically identical request involving Ms. Harrison only weeks before the request that led to grievance 566-02-5723 also ought to have estopped the employer from denying that request.

[27] The grievors asserted that the provisions of the collective agreement ought to be read keeping in mind their ordinary and plain meaning and that it was not open to the employer to subsequently alter the purpose and meaning of clause 21.05 by adding new conditions or limitations.

[28] According to the grievors, it is not the leave request that accompanies a shift exchange request in cases of a difference between the two employees' shifts (for example, exchanging a 16-hour shift with a 12.75-hour shift and proposing to take annual leave for the 3.25-hour gap) that generates additional cost to the employer but rather the fact that another employee could call in sick the day of the scheduled shift exchange. The result is that the unscheduled leave can no longer be covered by a substitute officer since that substitute officer is already covering the 3.25-hour differential generated by the shift exchange, meaning that another employee has to cover the unscheduled leave and that overtime costs are incurred.

[29] As for the 16-hour shift restriction imposed by the employer, the grievors argued that the fact that Appendix "K" of the collective agreement provides that only one 16-hour shift should normally be scheduled in an employee's shift cycle did not mean that the employer could not schedule more than one 16-hour shift in an employee's shift cycle or that an employee could not work more than one 16-hour shift in a shift cycle and that employees regularly worked several 16-hour shifts in a shift cycle as a result of overtime opportunities.

[30] The grievors contended that the words "with the approval of the Employer" in clause 21.05 of the collective agreement could be relied upon by the employer to deny

shift exchange requests to prevent a routine usage of this benefit by the same employees or to prevent employees from creating their own shift cycles but that sporadic requests ought not to engage the employer's discretion.

[31] The grievors claimed that the employer should not be permitted to violate the collective agreement for the sole purpose of achieving a consistent nationwide approach to shift exchange requests or to avoid potential costs.

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

[32] The employer reminded me that the collective agreement had to be read as a whole, starting with clause 6.01, which provides as follows:

> *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.*

[33] The employer argued that clause 21.05 of the collective agreement contains three elements, not two as suggested by the grievors. Those three elements are as follows: (1) sufficient notice, (2) an increase in cost, and (3) its approval.

[34] The employer also argued that the language used in clause 21.05 of the collective agreement does not suggest that its approval has to be linked to the other two elements, namely, notice and cost. According to the employer, the discretionary authority conveyed on it by clause 21.05 is not restricted solely to notice and cost issues and can include other issues related to its managerial responsibilities.

[35] The employer added that when the parties to the collective agreement wanted to limit the employer's approval authority to specific conditions, they did so in plain and ordinary language, citing clauses 30.01 and 30.12 as examples. Those clauses provide as follows:

> *30.01*
>
> ****
> *(a) After the completion of one (1) year's continuous employment in the Public Service, and providing an employee gives the Employer at least five (5) days' notice, the employee shall be granted forty (40) hours' marriage leave with pay for the purpose of getting married.*
>
> *. . .*

> *30.12 Leave without pay will be granted for personal needs in the following manner:*
>
> *(a) leave without pay for a period of up to three (3) months will be granted to an employee for personal needs as long as the employee's request is submitted forty-five (45) days in advance . . . .*
>
> . . .

[36] The employer recognized that while it enjoyed a discretionary authority to approve or deny shift exchange requests, it was nevertheless not permitted to exercise that authority in an unreasonable or arbitrary manner. However, it argued that the grievors led no compelling evidence to support an unreasonable or arbitrary exercise of that discretion on its part.

[37] With respect to the shift exchange requests resulting in employees having to work more than one 16-hour shift in one shift cycle, the employer contended that putting in place a policy that endeavours to achieve one of the objectives of Appendix "K" of the collective agreement, which the bargaining agent agreed to, was neither unreasonable or arbitrary.

[38] With respect to the shift exchange requests resulting in a differential exceeding two hours, the employer argued that the leave requests that must accompany such shift exchange requests to cover the gap result in an increase in cost and in a loss of scheduling flexibility of its substitutes. According to the employer, it is not always possible at the time of the request to predict if it will lead to an increase in cost, and often it can be determined only on the day of the shift exchange. However, in the employer's view, the mere possibility of an increase in cost ought to be sufficient to justify denying such a shift exchange and ought not to be considered unreasonable or arbitrary.

[39] The employer argued that by drafting a policy that circumscribes the types of shift exchanges that would be denied, it did not violate the collective agreement.

[40] Finally, the employer argued that the doctrine of estoppel did not apply in this case, as the grievors had failed to establish widespread past practice involving the types of shift exchanges at issue.

IV. Reasons

[41] The central thrust of my decision is based on the language of clause 21.05 of the collective agreement. For convenience, I will reproduce it:

> ***21.05***
>
> *(a) Provided sufficient advance notice is given and with the approval of the Employer, employees may exchange shifts if there is no increase in cost to the Employer.*
>
> *(b) On an approved exchange of shifts between employees, the Employer shall administer the shift schedule as if no exchange had occurred.*

[42] Having applied an ordinary and plain meaning to the words used by the parties in clause 21.05 and having taken into account the collective agreement as a whole, I must disagree with the grievors' argument that only two conditions must be met to obtain the employer's approval for a shift exchange, namely, that sufficient advance notice be given and that no increase in cost to the employer result from that exchange. I might have agreed with the grievors' position had the provision in question read as follows: "provided that sufficient notice is given and that there is no increase in cost to the employer, shift exchange requests shall be approved by the employer." But that is not how this provision was drafted and agreed to by the employer and the bargaining agent. The wording of clause 21.05 gives rise to a third condition, the employer's approval, which is required irrespective, in my view, of whether or not the other two conditions have been met. Unlike other provisions of the collective agreement, such as clauses 30.01 and 30.12, clause 21.05 provides for an added discretionary element. While that discretion ought not to be exercised unreasonably or arbitrarily, it remains that it is a separate and third condition that must be met for an employee to exchange a shift with another employee.

[43] On that very issue, the grievors made an interesting concession. They suggested that the words "with the approval of the Employer" in clause 21.05 of the collective agreement could be interpreted as meaning that the employer would be within its rights to deny shift exchange requests that were routinely made by the same employees or to prevent employees from designing their own work cycles. This certainly seems to suggest that the grievors do recognize that the employer can in fact exercise the discretion conveyed upon it under clause 21.05 to approve or deny a shift exchange request for reasons unrelated to notice or cost.

A. Shift exchanges involving a difference of more than two hours

[44] In its Regional Shift Exchange Policy, the employer clarified that it would not approve shift exchanges if the difference between the two proposed shifts exceeded two hours. When he testified, Mr. Lawson explained that because schedules are developed to reflect the operational needs of institutions, resulting in a variety of different shifts, i.e., 8.0, 8.5, 8.75, 9.0, 10, 12.5, 12.75 and 16 hours, there is always an overlap of approximately two hours between day shifts and night shifts, meaning that a shortfall of less than two hours caused by a shift exchange could easily be covered by the employees on duty. However, if the difference exceeds two hours, and if all scheduled substitutes have already been deployed to cover unscheduled absences, annual leaves and employees on training, another employee has to be deployed to cover the vacant position, which normally results in overtime costs.

[45] Since substitute officers are built into the scheduling, the grievors suggested that what generated overtime costs was not a shift exchange request that included an annual leave request of 3.25 hours but rather the fact that another employee may call in sick or be compelled to attend a training session on the day of the scheduled exchange, resulting in a substitute officer possibly no longer being able to cover the 3.25-hour gap and the possible need for another employee to cover this gap through overtime. I disagree with that analogy. The evidence from Mr. Lawson suggested that the reason for scheduling substitute officers was for the employer to be able to cover scheduled leave, unscheduled leave, employee training and tardiness, without having to resort to overtime, not to cover gaps created by shift exchange requests that are submitted after the scheduling has been finalized.

[46] In this case, the 3.25-hour leave request simply cannot be divorced from the shift exchange request. In fact, in this case, the shift exchange request specifically provided that the shortfall of 3.25 hours would be addressed through an annual leave request. In other words, the employer had to approve the shift exchange request for the leave request to be made to cover the shortfall. Therefore, the shift exchange request in such cases would generate the cost, not an unscheduled leave by another employee on the day of the exchange. The employer is not obligated to include substitute officers into its schedules, the cost of which it must bear; nor should it be obligated to deploy a larger number of substitutes to cover the shortfalls created by unpredictable and potentially countless shift exchanges. It does so to ensure that its

schedules are developed in a cost-effective manner within existing funded resources and that those schedules deploy the resources to all the identified security activities, as is required by Appendix "K" of the collective agreement. If the employer stopped scheduling substitutes, which it could do, such differentials or gaps would automatically generate overtime. The employer saw fit to incorporate substitutes into its scheduling to cover unplanned leave, planned leave, training sessions, etc., to meet its managerial responsibilities and the business needs of its organization, and it ought not to be obligated to increase the number of substitutes it regularly schedules for work to accommodate every shift exchange request. In my view there is a difference between an employee who requests annual leave for an entire shift and one who requests a shift exchange resulting in a leave request for part of his or her shift. The latter is not only potentially disruptive, from an administrative standpoint, but also comes with a cost, since the substitutes are not incorporated into the employer's work schedules for that purpose.

[47] In essence, the grievors are relying on the fact that the employer has seen fit to ensure an effective scheduling that will address the business needs of its organization by including substitutes into its scheduling and are suggesting that hence there is no guarantee that it will incur overtime costs in every shift exchange situation. That is simply not a realistic or pragmatic approach. Appendix "K" of the collective agreement provides that schedules are to be developed based on the identified business needs of the organization and that employees are to be deployed to the identified business needs, not to address shift exchanges. The employer's decision to limit the shortfalls created by shift exchanges to a maximum of two hours is clearly neither unreasonable nor arbitrary and, in my view, is a proper work-related use of the discretionary authority it enjoys under clause 21.05.

B. <u>Two 16-hour shifts in one work cycle</u>

[48] I agree with the grievors that the fact that Appendix "K" of the collective agreement provides that only one 16-hour shift should normally be scheduled in an employee's shift cycle does not mean that the employer cannot schedule more than one 16-hour shift in an employee's work cycle or that an employee cannot work more than one 16-hour shift in a work cycle. However, I see nothing unreasonable or arbitrary in refusing to approve shift exchanges that result in more than one 16-hour shift in an employee's shift cycle through a policy, especially when such a policy is

related to a desire to ensure effective scheduling that will address the business needs of the CSC and will maintain the quality of life of its employees (Appendix "K"), which I consider a legitimate business-related rationale.

[49] While operational requirements, which often are outside the employer's control, may result in employees working more than one 16-hour shift in a work cycle, it does not mean that the employer's policy is unreasonable or that its application of that policy is arbitrary. The employer's desire to limit 16-hour shifts to 1 per work cycle, except when operational requirements dictate otherwise, in my view, is not an unreasonable or arbitrary objective. In addition, employees are not obligated to accept overtime in cases in which operational needs generate overtime opportunities. Those who do accept overtime hours may indeed work more than one 16-hour shift in a work cycle, but that does not mean that the objective outlined in Appendix "K" of the collective agreement and in the employer's policy is unreasonable or arbitrary or contrary to the collective agreement.

[50] The employer's decision not to approve shift exchanges resulting in two 16-hour shifts in an employee's work cycle is neither unreasonable nor arbitrary. In my view, it is a proper work-related exercise of the discretionary authority it enjoys under clause 21.05 of the collective agreement.

C. Estoppel

[51] I will now turn to the issue of estoppel or past practice. No evidence of a past practice was established in these circumstances. Ms. Harrison referred to one previous shift exchange in which the employer's approval was allegedly obtained despite the fact that there was more than two hours' difference between the two shifts being exchanged, but she could not specify when this shift exchange had been approved and by whom, she could not confirm whether she had in fact taken leave for the 3.25 hours of shortfall, and she was unable to produce any corroborating documentation of this shift exchange.

[52] Mr. Harrison for his part referred to the fact that the employer had approved a great number of shift exchange requests he had submitted in the past but did not specify whether any of those resulted in him having to work more than one 16-hour shift in one work cycle; nor did he suggest that any of those resulted in him having to request annual leave for the difference between the two shifts being exchanged.

Therefore, his evidence was of no assistance to the grievors' contentions in these matters.

[53] I can conclude only that the conditions for arguing estoppel or past practice have simply not been met in this case as no practice has been established on the part of the employer and no detrimental reliance was proven.

V. Conclusion

[54] I do not share the grievors' suggestion that the employer is attempting, through its policy, to add new conditions or limitations to clause 21.05 of the collective agreement. That provision contains a negotiated discretionary authority that was given to the employer. The fact that it has seen fit to circumscribe when and how it would exercise that discretion does not alter the plain or ordinary meaning of that clause; nor does it violate the collective agreement. While placing certain limits on the benefits conferred by clause 21.05 may be perceived as an infringement by the grievors, it is not unusual to find such limitations when the provision in question specifically contains a discretionary authority to approve or deny the benefit.

[55] The employer's authority to manage its operations and respond to its operational needs and responsibilities, which is enshrined in article 6 of the collective agreement, in my view is not hampered in this case by its employees' desire to exchange shifts.

[56] The parameters that the employer put in place in connection with shift exchange requests is in my view a reasonable exercise of the discretion it enjoys under clause 21.05 of the collective agreement.

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

(The Order appears on the next page)

VI. Order

[58] These grievances are denied. I order files 566-02-5721, 566-02-5722 and 566-02-5723 closed.

January 13, 2014.

Stephan J. Bertrand,
adjudicator