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File: 567-02-98

Citation: 2015 PSLREB 62

*Public Service  
Labour Relations Act*



Before an adjudicator

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BETWEEN

**PUBLIC SERVICE ALLIANCE OF CANADA**

Bargaining Agent

and

**TREASURY BOARD  
(Department of Fisheries and Oceans)**

Employer

Indexed as

*Public Service Alliance of Canada v. Treasury Board (Department of Fisheries and Oceans)*

In the matter of a group grievance referred to adjudication

**Before:** David Olsen, adjudicator

**For the Bargaining Agent:** Kim Patenaude, counsel

**For the Employer:** Vanessa Reshitnyk, counsel

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Heard at Vancouver, British Columbia,  
November 24 and 25, 2014.

## REASONS FOR DECISION

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### I. Nature of the grievance and background facts - agreed to by the parties

#### A. Overview

[1] This grievance concerns how work performed by variable-hour shift workers (VHS workers) on designated paid holidays (DPH) is accounted for and compensated. The relevant collective agreement (CA) is the Technical Services agreement between the Treasury Board and the Public Service Alliance of Canada (PSAC) expiring on June 21, 2011.

[2] The grievors are officers of the GT-04 and GT-05 group and level who work variable hours at the Sea Island Coast Guard facility in British Columbia. They are represented by the Union of Canadian Transportation Employees, a component of the Public Service Alliance of Canada.

[3] On July 22, 2011, management representatives at the Sea Island Coast Guard facility in British Columbia advised its VHS workers in an email dated July 22, 2011 that the employer was changing how it accounted for and compensated VHS workers who worked on a DPH.

[4] Management stated that in accordance with clause 25.13(d) of the collective agreement, VHS employees working on a designated paid holiday would be credited 7.5 hours (the hourly value of the holiday) towards the 600 hours required to be worked over a 16-week schedule, which would be reflected in their biweekly paycheque. In addition, they would receive a supplemental paycheque for their regularly scheduled hours (normally 10 or 14) actually worked on the DPH, for which they would be compensated at the premium rate of pay of time and one-half (1.5).

[5] On August 14, 2011, the PSAC presented a group grievance stating the following:

*We grieve that as of July 22, 2011 the employer has violated the provisions of the Technical Services Agreement -Terms and Conditions Governing the Administration of Variable Hours of Work-Article 25 including any and all relevant articles of the collective agreement or applicable legislation, by changing the shift schedule so as to fail to appropriately compensate the group of employees listed in the attachment will for designated paid holidays.*

[6] The employer's final-level response to the group grievance was provided on April 11, 2012 by Mark Grégoire, Commissioner, Department of Fisheries and Oceans. The response read in part as follows :

*I have reviewed the circumstances surrounding the grievance and have given careful considerations to the arguments presented by your union representative...*

*According to articles 25.13(d)(ii), the hours that an employee works on a designated paid holiday are paid at time and one half up to his regular scheduled hours worked and at double time for all hours worked in excess of his regular scheduled hours. Since overtime hours are authorized hours of work in **excess** of the employees scheduled hours of work, the 10 or 14 hours worked by an employee on a designated paid holiday do not count toward the 600 hours of the regular 16 week schedule; as they are counted as overtime and paid accordingly on a separate cheque.*

*Also, according to article 25.13 (d)(i), a designated paid holiday shall account for 7.5 hours of straight time and these hours count toward the 600 hours of the regular sixteen weeks schedule. Since the employee's regular scheduled hours of work are either 10 or 14 hours, there is a gap between the hour value of the designated paid holiday and the regular hours the employee is scheduled to work that day. In cases where the employees regular work schedule for that day is a 10 hour shift, the gap is 2.5 hours, and for a 14 hour shift, the gap is 6.5 hours. Instead of recuperating those hours on the employees pay, the employer is including them in the schedule.*

*As hours worked on a designated paid holiday cannot count towards overtime hours and regular hours at the same time, the employer is not in violation of articles 25.13 when he recuperates the missing regular hours by adding them in the schedule.*

[7] The bargaining agent called one witness, Captain Al Taylor, stationed at the Coast Guard facility at Sea Island. The employer called two witnesses: Brian Wooton, currently the Marine Superintendent of the Canadian Coast Guard fleet for the Western region and at all times material to this grievance the Officer in charge of the Coast Guard base at Sea Island; and Maureen Langdon, the manager of compensation for the Department of Fisheries and Oceans, including the Coast Guard.

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**B. Agreed-upon facts and conclusions of fact based on the evidence**

[8] The grievors, VHS workers are shift workers. They work variable hours on a rotating or irregular basis pursuant to a variable-shift schedule arrangement mutually agreed to between the parties in accordance with the collective agreement. The grievors at the time of the grievance worked 10-hour day shifts and 14-hour night shifts. The grievors currently work 10.2-hour day shifts and 14-hour night shifts.

[9] Captain Taylor explained that each officer usually works two 10-hour day shifts then works two 14-hour night shifts with four days off. The cycle then repeats itself.

[10] Clause 25.04 of the collective agreement provides that the normal workweek for non-VHS workers or regular employees (i.e. those who do not work variable hours) is 37.5 hours, exclusive of lunch periods, comprising 5 days of 7.5 hours each, Monday to Friday.

[11] Clause 25.09 provides that VHS workers' normal hours of work are scheduled so that employees work:

*(i) an average of 37.5 hours per week and an average of five days per week;*

*and*

*(ii) 7.5 hours per day.*

[12] A VHS worker's schedule provides an average of 37.5 hours per work week over the life of the schedule. In the present case, the grievors must work or otherwise account for 600 hours over a 16-week period to average 37.5 hours per week.

[13] The employer's pay administration system provides annually for 26 biweekly paycheques. A VHS worker receives biweekly paycheques representing compensation for 75 hours of pay at straight-time rate, regardless of how many hours he/she actually worked during the preceding biweekly period. This compensation is calculated at the employee's hourly rate of pay for the normal workweek (37.5 hours) and the normal workday (7.5 hours).

[14] A VHS worker may not actually work 75 hours in the two-week period preceding their biweekly compensation. He/she may work more or less than 75 hours in this two-week period; however, over the life of his/her 16-week schedule, he/she is

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expected to work an average of 37.5 hours per week (i.e. the same number of hours as a regular employee over the same period of time).

[15] Any premium pay such as overtime, shift premiums, or designated paid holiday premium pay is calculated separately from the grievors' regular biweekly compensation and paid by a separate paycheque.

[16] Clause 25.13(d) of the collective agreement provides the following with respect to designated paid holidays for VHS workers:

*(i) A designated paid holiday shall account for seven decimal five (7.5) hours.*

*(ii) When an employee works on a designated paid holiday, the employee shall be compensated, in addition to the pay for the hours specified in subparagraph (i) at time and one-half (1 1/2) up to his or her regular scheduled hours worked and at double (2) time for all hours worked in excess of his or her regular scheduled hours.*

[17] Captain Taylor explained that before the change in accounting and compensation in July 2011, all of the scheduled hours worked by a VHS worker on a designated paid holiday were credited towards the 600 hours that must be worked or otherwise accounted for over a 16-week period. For example, if he worked his regularly scheduled 10-hour day shift on a designated paid holiday, he would receive premium pay at time and a half for the 10 hours, and in addition, 10 hours at the straight time rate would be credited towards the 600 hours. To the best of his recollection the practice had been in place at least back to 1997.

[18] If a VHS worker on the regularly scheduled 10-hour day shift did not work on the designated holiday, the employee was credited with 7.5 hours towards the 600 hours. The employee would be paid for the 7.5 hours for the designated holiday. The employee would have to make up the balance of the 10-hour shift through a leave deduction of 2.5 hours or an additional 2.5 hours would be added to the schedule.

[19] In Captain Taylor's view the new interpretation of the collective agreement for VHS workers who work on a designated paid holiday results in those employees having to work more than 600 hours over the 16 week averaging period.

[20] Captain Taylor filed with the Board an explanation of the Excel formula used to total the hours worked using his own hours as an example over 16 weeks, setting out the results of the employer's calculation according to the union.

**Explanation of the Excel Formula used to total the hours worked**

*A. Taylor's hours used in this example*

<i>Day shift</i>	<i>23 shifts x 10.2 Hours each</i>	<i>234.60 Hours</i>
<i>Night Shift</i>	<i>23 shifts x 14 Hours each</i>	<i>322 Hours</i>
<i>Sick Leave - Day</i>		
<i>Sick Leave - Night</i>		
<i>Day work (7.5 hours)</i>		
<i>Siyay [sic] (Day work 10 hours)</i>	<i>4 x 10 hour days</i>	<i>40 hours</i>
<i>Hours worked on DPH</i>	<i>3 x 10 hour days +14 hour night</i>	<i>subtract 44 hours</i>
<i>Hours credited for work on DPH</i>	<i>4 x 7.5 hours per Stat.</i>	<i>30 hours</i>
<i>Personal Volunteer Leave</i>		
<i>Family Related Leave</i>	<i>1 x 10 hour day</i>	<i>10 hours (additional dayshift missed due to illness in the family)</i>
<i>Day work (12 hours)</i>		

**Employer's Calculation**

*234.6 Day Shift Hours*

*322 Night Shift Hours*

*40 Day work Hours*

*10 Family Related Leave Hours*

***subtract*** *the 44 regularly scheduled hours deemed to have been worked on a holiday*

**Result of Employer's Calculations**

*Actual hours worked or otherwise accounted for*

*7.5 hours Civic Holiday - Not worked*

*234.6 Day Shift Hours*

*322 Night Shift Hours*

*40 day work hours*

***add 30 hours credit to replace the 44 hours***

***10 Family Related Leave Hours***

***7.4 Hours Owed Time (Annual Leave Deduction)***

***7.4 Hours Owed Time (Annual Leave Deduction)***

***600 Hours counted (paid)***

***621.5 Hours worked (or otherwise accounted for)***

***621.5 Hours/16 weeks= 38.8 hours per week  
Employee only paid for 600 hours over 16 weeks***

[21] Captain Taylor acknowledged that under the current policy when he worked 14 hours, his regularly scheduled shift on a designated paid holiday, he would be paid at time and a half for the 14 hours. He would be paid in addition for 7.5 hours at straight time rates and would be credited 7.5 hours towards the 600 hours required over the 16 week averaging period.

[22] With respect to the explanation of the Excel formula that he had filed, Captain Taylor agreed that he had received supplemental paycheques at premium pay for the 44 additional hours worked on four designated holidays, comprising three 10 hour day shifts and one 14 hour night shift. The calculation of the 621.5 hours includes those hours worked at the premium rate. The 44 hours were not credited towards the 600 hours required to be worked or otherwise accounted for over the 16 week averaging period. The employer credited Captain Taylor with 30 hours towards the necessary 600 hours for the four designated paid holiday based on the value of the holiday being 7.5 hours, as reflected in Captain Taylor's schedule.

[23] Brian Wooton, the Officer in Charge, testified that he implemented a change in policy with respect to the accounting method for designated paid holidays in July 2011.

[24] By way of background, he stated that in late 2009, he received a Corporate Compensation directive from Fisheries and Oceans Canada outlining procedures for compensation for work on a designated paid holiday.

[25] That directive, entitled "Compensation for Work on a Designated Paid Holiday," provides in part as follows:

6.1 *The relevant Collective Agreement must always be consulted to determine the value of a Designated Paid Holiday. The number of hours a Designated Paid Holiday is valued at is dependant on the employees' scheduled work week. If the employee has a 40 hour scheduled work week, the Designated Paid Holiday is worth 8 hours; and similarly if the employee's scheduled work week is 37.5 hours, then the Designated Paid Holiday would be worth 7.5 hours.*

*Consequently, the employee would be entitled to either 8 hours or 7.5 hours time off from work for a designated paid holiday **regardless of the employee's scheduled hours of work for that day.***

*6.1.1 For example: If the employee is scheduled to work 12 hours on a Designated Paid Holiday valued at 7.5 hours and does not have to report to work, he must make up the 4.5 hour difference between the value of the Designated Paid Holiday and his scheduled hours.*

6.2 *It is the Manager's responsibility to track Designated Paid Holidays and monitor the employee's hours of work. It is also at his discretion, if operationally feasible, to authorize the employee to either make-up the time or take it in another type of leave (i.e. vacation, compensatory, LWOP etc.).*

*Therefore, if an employee works on a Designated Paid Holiday, he is entitled to be paid for all overtime hours according to his relevant Collective Agreement. It is not up to the Compensation Advisor to adjust the overtime pay.*

*The difference in hours between the employee's scheduled hours of work and the value of the Designated Paid Holiday are to be recovered, if and only if, Compensation receives authorized documentation from the employee's manager.*

*Compensation may not always be aware of any alternate arrangements worked out between the manager and the employee.*

*[Sic throughout]*

[26] Officer Wooton explained that when he joined the work unit in 1987, the shift schedule was done in longhand, and at that time, the difference between the employees' scheduled hours of work and the value of the designated paid holidays were corrected. There was a transition to Excel in or about the year 2000. The formulas within Excel were such that there was no corrective action being taken thereafter.

[27] Following the introduction of Excel in 2000 and before the change in accounting and compensation in 2011, if an employee was working a 10-hour scheduled day shift



on a designated paid holiday, he was being compensated for 10 hours at straight time and in addition for 10 hours at premium pay, for a total of 25 hours' cash value, as opposed to the historic system, where the employee had been compensated for 7.5 hours at straight time and in addition for 10 hours at premium pay, for a total of 22.5 hours' cash value.

[28] Officer Wooton raised his concerns with the grievors. He testified that he engaged in a dialogue with them over a period of some two years until 2011, which dialogue included a review of the jurisprudence. When the parties were unable to reach a mutually acceptable resolution, he implemented the change in policy. He planned to account for the difference between the employees' scheduled hours of work and the value of the designated paid holiday not by recuperating the difference in hours from the employees' compensation but by adding the difference to the 600-hour, 16-week schedule.

[29] On July 22, 2011, he sent an email to the grievors that stated in part as follows:

*A number of months ago I brought forward management concerns - to your attention - respecting how Sea Island accounts for and compensates GT employees for designated paid holidays....*

*Essentially GT's are currently being compensated for hours actually worked (normally 10) on their DPH at time and one half rate. They are also being credited ten hours towards their normal bi-weekly paycheque. This brings the total compensation to 25 hours for a DPH worked as a dayshift. The correct compensation is 22.5 hours: this is arrived at by paying hours worked at time and one half PLUS 7.5 hours credit towards normal bi-weekly pay.*

*The "error" has persisted for some time now and appears to be a result of a change to the internal xcel accounting program that we administer internally at Sea Island. Between 1968 and sometime in the recent past the total compensation for DPH's "was" 22.5 hours for a dayshift.*

...

*We will correct this accounting error effective today's date (July 22, 2011). What does it practically mean? It means that your required hours of day work will increase by 2.5 hours for each DPH "dayshift" or by 6.5 hours for each statutory holiday "Nightshift" worked....*

*I am attaching a 2009 Corporate Compensation Directive on this subject....*

[30] Officer Wooton acknowledged that prior to implementing the change in policy, he looked at the practice in other workplaces in the department. The Coast Guard facility in Victoria continues with the pre-2011 practice for its operations in three rescue coordination centers, whereas the Coast Guard facilities in Halifax and Trenton apply the post-2011 methodology.

[31] Maureen Langdon, the compensation manager for Fisheries and Oceans since April 2013, explained why in the department's view the hours worked on a designated paid holiday do not count towards the 600 hours that must be worked or otherwise accounted for over a 16-week period. She stated that all employees, whether regular or variable, are entitled to 7.5 hours of pay on a designated paid holiday. If a variable-shift worker for operational reasons must work on the holiday, the employer is really scheduling them to perform overtime duties for the duration of their regularly scheduled shift which hours are in excess of the 7.5 normal hours of work paid and credited on account of the holiday .

[32] According to the employer's interpretation of Corporate Compensation Directive CCD 2008-001 and the employer's interpretation of clause 25.13(d) of the collective agreement, VHS workers who work on a designated paid holiday are credited 7.5 hours at the straight-time rate of pay, in accordance with clause 25.13(d)(i) of the collective agreement. These hours are counted towards the 600 hours of straight time that the grievors must account for before the end of the 16-week schedule.

[33] In accordance with clause 25.13(d)(ii) of the collective agreement, all of the regularly scheduled hours worked on a designated paid holiday are paid at the premium rate of time and one-half, and the VHS worker is provided with a separate paycheque for this amount. For example, where a VHS worker works a 10-hour shift on a designated paid holiday, he would receive a supplemental paycheque for the value of 10 hours worked at the premium rate of time and one-half (i.e. 10 hours times 1.5 equals 15 hours cash value). These premium rate hours are not counted towards the above mentioned 600 hours.

[34] The grievors disagree with the employer's interpretation of clause 25.13 of the collective agreement and its change in accounting and compensation.

## **II. Summary of the arguments**

### **A. Argument of the union**

[35] It is the bargaining agent's position that the employer's interpretation of clause 25.13 is incorrect. There is no mischief that would justify a change to the way in which the hours are accounted for employees who work variable hours.

[36] The grievors should be treated exactly the same way as regularly scheduled employees when one compares the two groups over a 16-week period. Both work 600 hours. The regularly scheduled employees work 37.5 hours over a five-day period each week, 7.5 hours per day. The grievors, VHS workers, work 10-hour day shifts or 14-hour night shifts. All hours worked should be counted towards the 600 total hours that must be worked over a 16-week period. When you do the math, 600 total hours divided by 16 weeks averages 37.5 hours per week.

[37] Both are paid biweekly based on a 37.5-hour workweek. Employees working regularly scheduled hours and employees working variable hours are based on a notional 37.5-hour workweek. The notional workweek and a notional workday are important concepts referred to in the leading cases interpreting the language surrounding designated paid holidays for employees working variable hours.

[38] In looking at both types of employees pre-July 2011, nothing changes if the employees work a designated paid holiday. Both get their regular pay and separate cheques for premium hours worked on the designated paid holiday.

[39] On a designated paid holiday, employees are supposed to get a day off. Premium hours are paid in exchange for having to work on the designated paid holiday.

[40] The pre-2011 accounting is in accordance with the correct interpretation of articles 25 and 32 of the collective agreement. There has been no overpayment to variable-shift workers. They are treated in exactly the same way as regularly scheduled employees, consistent with previous case law. Counsel referred to the decisions in *Breau et al. v. Treasury Board (Justice Canada)*, 2003 PSSRB 65, at paragraphs 17 and 18, referring to the *King and Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB Files No. 166-2-28332 and 28333 (19990819) decision, and paragraph 28; *Mackie v. Treasury Board (National Defence)*, 2003 PSSRB 103, at paragraph 35; *PSAC v.*

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*Treasury Board*, 2011 PSLRB 133, at paragraphs 22 and 23, and *Bazinet v. Treasury Board (Department of Public Works and Government Services)*, 2011 PSLRB 111 at paragraphs 27 and 28.

[41] The change in accounting post-2011 improperly accounts for the hours worked by the grievors when they are working on a designated paid holiday. They are no longer being treated the same way as regularly scheduled employees and are significantly disadvantaged, contrary to the collective agreement.

[42] Clause 25.11 of the collective agreement provides as follows:

*Notwithstanding anything to the contrary contained in this Agreement, the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason only of such variation nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement.*

[43] The adjudicator in *Mackie v. Treasury Board (National Defence)* refers to virtually identical language in the collective agreement there at issue in upholding the grievance before him. The grievor, engaged in heating power and stationary plant operations, worked 12-hour shifts over a 12-week cycle, pursuant to a variable hours of work agreement. When the grievor worked a full 12-hour shift on a designated paid holiday, he claimed entitlement to his regular pay for the designated paid holiday, defined in the collective agreement, as the normal daily hours of work, plus time and one-half for the hours worked, for working his regularly scheduled hours.

[44] The employer acknowledged that the grievor was entitled to eight hours' pay for the DPH plus time and one-half for the 12 hours worked, for a total of 26 hours' pay. However, the employer took the position that the amount already paid to the grievor in his regular biweekly paycheque, 12 hours, had to be deducted from the total due to the grievor.

[45] The adjudicator allowed the grievance, reasoning in part at paragraphs 30 to 35:

*[30] Both parties agree that the total compensation owed to the employee for working on a [designated paid holiday] is 26 hours.*

*[31] The bargaining agent states that the employee's regular pay cheque reflects an 8-hour day, and the compensation for working on the DPH is time one-half for*

the 12-hour shift. The additional amount owing the employee, over and above his regular pay cheque, is therefore 18 hours.

[32] The employer states that the employee regularly works a 12-hour shift and gets paid for such. Therefore, the additional amount owing to the employee for working a 12-hour DPH is 14 hours.

[33] I believe an answer to this supposed conundrum lies in clause 28.04 of the collective agreement.... It states, in part:

... the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason of any such variation...

(emphasis [added])

[34] Even though Mr. Mackie worked a 12-hour shift, he could not receive additional payment simply because he worked the variation in hours. Therefore, he has to get the same payment as someone who does not work variable hours. This means he has to get paid an amount equal to a regularly scheduled, 8-hour-a-day (40-hour-a-week) employee. Consequently, his regular bi-weekly pay cheque is no greater than someone working an 8-hour day, even though he works a 12-hour shift. In his case, a 12-hour shift will average out to an 8-hour day over the 12-week cycle.

[35] Mr. Mackie's bi-weekly pay cheque never varied. He was paid as though he worked an 8-hour day. When a DPH occurs, and he works his 12-hour shift, he is entitled to an amount over and above his regular pay cheque. Since his regular pay cheque has been equated to an 8-hour day, and the parties agree he is entitled to a global amount of 26 hours' pay, he is owed 18 additional hours for working the DPH.

[Emphasis in the original]

[46] In this case, post-July 2011, regular employees under the collective agreement work 7.5-hour days, 37 1/2 hours per week. Regular employees receive a biweekly paycheque. If regular employees work on a designated paid holiday, they receive a separate paycheque for the hours worked at premium pay, time and one-half, up to 7.5 hours and double time over 7.5 hours.

[47] With respect to VHS employees working shifts of 10 and 14 hours, all of the hours actually worked on a designated paid holiday should be credited towards the 600 hours required to be worked or accounted for over a 16-week period. Only

7.5 hours, which is the value of the designated paid holiday, is being credited towards those hours.

[48] The employer is requiring variable-shift employees who work on the designated paid holiday, despite having worked 10 or 14 hours, to make up an additional 2.5 or 6.5 hours for which they are not being compensated, by adding them to the schedule or through the deduction of leave credits.

[49] Regular employees and variable-shift employees are not being treated the same. In order to accumulate the same 37.5-hour workweek as a regular employee, variable-shift employees need an additional 2.5 or 6.5 hours per designated holiday.

[50] In *Breau v. Treasury Board, supra*, the collective agreement provisions are identical to the provisions in this case. Firearms officers at the Canadian Firearms Centre, processing and approving firearms licenses and transfers of firearms ownership, worked on a seven-day shift basis, 8 a.m. to 12:30 a.m. during the week and 9:30 a.m. to 10 p.m. on the weekends. They were scheduled to work on a six-week roster system with variable work hours per week designed to total 225 hours over a six-week period, which averaged out at 37.5 hours per week. They were scheduled on a 4/4 basis, four shifts on and four shifts off, the shifts being of varying durations: 12-hour shift (11 paid hours); 10-hour shifts (8.5 paid hours) and eight-hour shifts (7.5 paid hours). They were assigned to the duty roster in varying combinations of 12-, 10- and 8-hour shifts staggered over the life of the roster (including an extra day off) so as to ensure that within every six-week cycle they were scheduled to work a total of 225 hours.

[51] When the employees worked on a designated paid holiday, the employer calculated the supplemental paycheque by applying the premium to which the employees were entitled, to the regularly scheduled hours worked by the employee on the holiday, i.e. 7.5, 8.5 or 11 hours. Where the hours worked exceeded the 7.5 hours which accounted for the designated paid holiday, the employer set off what it considered excess hours already paid in the regular biweekly paycheque at straight time against the total number of regularly scheduled hours worked that day, converted to straight-time hours from the supplemental premium paycheque.

[52] The bargaining agent argued that the employer had failed to compensate the employees properly for hours worked on the paid holiday by setting off 3.5 hours

which in effect deprived the employees of 2.33 of the 11 regularly scheduled hours worked at time and a half to which they were entitled. In support of their position, the grievors argued that the adjudicator was bound by the decision of the Board in *King and Treasury Board, supra*, and that the matter was *res judicata*.

[53] The employer argued that both parties agreed that a pay entitlement for an 11-hour shift worked on a designated paid holiday is 24 hours at straight time (7.5 hours plus 16.5 hours equals 24), but the grievors received in the regular biweekly paycheque designated paid holiday pay for the full 11 hours of the shift, i.e. 3.5 hours in excess of that to which they were entitled. The employer argued that the decision in *King* was inapplicable on the facts as there was a finding of fact in that case that the grievor's regular biweekly paycheque included pay only for the 7.5 hours on the designated paid holiday. In the alternative, the employer argued that the matter was not *res judicata*, that more than one interpretation of the disputed provision may be reasonable and that the Board should reach its conclusions based upon the language of the agreement properly applied in that case.

[54] The adjudicator observed that in *King*, the employer had made the same argument as was made before him. He recited from the *King* decision as follows:

...

*Mr. King is entitled to be paid his regular pay for the two-week period in which the Canada Day holiday occurred (7.5 hours on the designated paid holiday ...). This he would get whether he worked or not. However, he did work 8.57 hours. Therefore, he is entitled to premium pay at time and one-half for a total of 12.855 hours (8.57 x 1.5 equals 12.855 hours) for his work on the holiday in addition to his regular pay for the two-week period.*

[55] The adjudicator reasoned that even though an employee works more than a 7.5 hour shift on a regular working day or on a designated paid holiday, the pay he receives for 75 hours of work is as if he had worked 7.5 hours in 10 working days over the two-week period.

[56] The adjudicator was of the view that the adjudicator in *King* was correct in her interpretation of the equivalent collective agreement terms governing premium pay for work performed on a designated paid holiday. He concluded that the effect of setting off money paid for notional hours worked in a two-week period of the six-week cycle

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against money paid for actual hours worked on a designated paid holiday deprived the VHS employee of the compensation to which he or she was entitled by virtue of the provisions of the collective agreement, namely, 7.5 hours paid at straight time + 11 hours paid at the premium rate of time and one-half.

[57] In the instant case, the logic is the same. The employer has already paid an employee for 10 hours for the regularly scheduled shift and there is a need to recoup the hours in excess of 7.5. This is apparent when one refers to the employer's reply at the final level of the grievance procedure, which states in part:

...

*Also, according to article 25.13d) (i), a designated paid holiday shall account for 7.5 hours of straight time and these hours count towards the 600 hours of the regular sixteen weeks schedule. Since the employee's regular scheduled hours of work are either 10 or 14 hours, there is a gap between the hour value of the designated paid holiday and the regular hours the employee is scheduled to work that day. In cases where the employee's regular work schedule for that day is a 10 hour shift, the gap is 2.5 hours, and for a 14 hour shift, the gap is 6.5 hours. Instead of recuperating those hours on the employee's pay, the employer is including them in the schedule.*

...

[Sic throughout]

[58] In other cases, they have deducted the money from the premium pay, whereas in this case, they require the employees to make up the hours.

### **B. Argument of the employer**

[59] This group grievance raises the issue of whether the employer's policy of not counting the premium paid hours worked in excess of 7.5 (the value of the holiday) on a designated paid holiday, towards the 600 hours the grievors must work over a 16-week averaging period, contravenes clause 25.13(d) of the collective agreement. A related issue is whether the grievors were paid for hours worked in accordance with the collective agreement.

[60] The onus of proof is on the bargaining agent to prove the grievance on a balance of probabilities. See *Campbell et al. v. Treasury Board (Correctional Service of Canada)*,



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2012 PSLRB 57, at paragraph 27, and *Arsenault et al. v. Parks Canada Agency*, 2008 PSLRB 17, at paragraphs 22 and 29.

[61] The grievors are VHS workers. Under the provisions of the collective agreement, they are automatically given a holiday on a designated paid holiday of 7.5 hours at straight time, as testified to by officers Taylor and Wooton. The Sea Island Coast Guard facility complement cannot be reduced beyond a certain level. The employer cannot permit all variable-shift workers to be off on a designated paid holiday.

[62] The grievors who are scheduled to work on a designated paid holiday are compensated at a higher rate of pay, as Ms. Langdon explained. They are paid at a premium rate of pay for all hours they work on a DPH as well as receiving their regular pay for the holiday.

[63] In *Arsenault, supra*, the adjudicator dealt with a number of cases relating to the compensation owed to VHS workers working on a designated paid holiday. The grievors were Parks Canada employees who worked variable shifts under collective agreement provisions nearly identical to the provisions in this case. The issue in that case involved a determination of how to administer the pay regime when a designated paid holiday fell within the biweekly pay period. The grievors' shifts were not of equal length. Their regular pay was based on 80 hours of work performed over two weeks.

[64] On the August designated paid holiday, each of the grievors worked nine hours. They were only paid for eight of those hours at straight time and for nine hours at the rate of time and one half. To make up for a perceived one-hour shortfall in the 80 hours over two weeks, one hour of leave was recovered from each grievor.

[65] The adjudicator in dismissing the grievances reasoned as follows at paragraphs 33 to 41:

*33 Why is there a need to recover leave from 3 employees who have clearly worked their 80 hours already, including 9 on the August 2005 DPH?*

*34 That brings me to the application of clauses 22.14(d)(i) and (ii) . . . The clauses seem clear to me. It was not argued that they are in some way ambiguous.*

*35 Clearly, those provisions are in direct conflict with clause 58.02(a) of the collective agreement.*

36 Clause 22.14(d)(i) of the collective agreement says that a DPH shall account for eight hours in the grievors' case. Looking at clause 22.14(d)(ii), the conflict becomes obvious.

37 Mr. Burke, Mr. Clements and Mr. Rosta worked on the August DPH. They are entitled to be paid in addition to the pay for the hours (in this case eight) specified in clause 22.14(d)(i) of the collective agreement at time and one-half up to their regular scheduled hours worked. [Emphasis added] Clearly, an employee who works on a DPH is entitled to be compensated for the hours specified in subparagraph (i). The hours that are specified in subparagraph (i) for these grievors is eight.

38 It is beyond my jurisdiction to change collective agreement language. Had the words provided that employees shall be compensated for the hours that they work, that would have been a different matter. They do not!

...

40 Applying the customary rules of construction, where terms used are clear and not ambiguous, there is no need to attempt to discern the true intent of the parties. In those cases the adjudicator is to give the words chosen by the parties their plain and ordinary meaning. Having done so, I must conclude that the parties agreed to limit the number of hours that employees would be paid for working on a DPH regardless of how many hours they actually worked. The agreement is set out at clause 22.11 of the collective agreement under the title "Terms and Conditions Governing the Administration of Variable Hours of Work Schedule":

. . . This agreement is modified by these provisions to the extent specified herein.

41 The parties intended that clauses 22.11(d)(i) and (ii) would modify the collective agreement, and they have. Hours worked in excess of eight on the DPH are not to be compensated, other than for calculating premium pay. That was the agreement struck at the bargaining table.

[66] In the present case, the employer is adopting the adjudicator's interpretation in *Arsenault*.

[67] The employer's current compensation policy does not deviate from the compensation that the adjudicator in *Mackie* says variable-shift employees are entitled to when they work a designated paid holiday. See paragraph 35 of the decision.

[68] In the present case, even though the grievors worked a 10- or 14-hour shift on a designated paid holiday, they could not receive additional credits for hours worked at straight-time pay because they were VHS workers. Their biweekly paycheque is the same as that of a regular employee. However, as officer Wooton testified, like a regular employee, a VHS worker must account for 600 hours at straight time over a 16-week period. This interpretation of the collective agreement reflects that the grievors working on a designated paid holiday earned 7.5 hours and not 10 or 14 hours to be credited towards 600 hours of the 16-week schedule.

[69] Officer Wooton scheduled the grievors' shifts in order to ensure that they worked 600 hours of straight time over the life of the schedule, averaged out to 7.5 hours per day or 37 1/2 hours per week. He stated that for practical reasons, where a grievor worked a 10-hour shift on a designated paid holiday at premium rates, management would schedule a grievor for 2.5 hours at straight time at some other point in the 16-week schedule, in accordance with the language of the collective agreement that states the designated paid holiday is only worth 7.5 hours. Officer Wooton and Ms. Langdon testified that when the grievors work a 10-hour shift and receive the supplemental paycheque for time worked at time and one-half, these hours do not count towards the 600 hours, and they are compensated by a supplemental paycheque.

[70] The Board's jurisprudence does not address the issue of whether the hours worked on a designated paid holiday should count towards the 600 straight-time hours that variable-shift employees must account for before the end of the 16-week schedule. These cases address the issues of premium pay.

[71] *Campbell et al. supra* involved a situation where correctional officers who worked variable-shift hours were advised that they were not required to work on a designated paid holiday. They had been scheduled to work the designated paid holiday. However, at the last moment, the employer did not have sufficient work. The grievors alleged that the employer violated the designated paid holiday and other provisions of the collective agreement.

[72] The grievors worked modified hours on rotating shifts. Two employees worked 12.75-hour shifts and one a 16-hour shift. The collective agreement provided that a designated paid holiday must account for the normal daily hours specified in the

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collective agreement. The normal daily hours for employees working on a rotating or a regular basis were set out at 8.5 hours.

[73] The employer, when it booked off the employees on a designated paid holiday, took the position that the employees were in a deficit of hours worked. For those working a 12.75-hour shift that meant a deficit of 4.25 hours, and for the employee working a 16-hour shift, a deficit of 7.5 hours. The grievances raised the question of the employer's right to unilaterally book off employees on a designated paid holiday and the question of its right to claim hours from employees after a designated paid holiday.

[74] The adjudicator observed that the employees were asking for the right to work on a designated paid holiday and concluded that the collective agreement did not give them such a right.

[75] With respect to the issue of the employees' hours being clawed back, the adjudicator stated as follows at paragraph 35: "According to the collective agreement, a DPH has an 8.5-hour value for employees working modified hours." That was confirmed by the Federal Court in *Attorney General of Canada v. Garrah*, 2010 FC 1192. When employees are scheduled to work more hours on a DPH than the hour value of the DPH, it is normal that they automatically all owe the employer some hours of work. That principle was confirmed in *White v. Canada (Solicitor General)*, 2004 FC 1017, and in *Wallis v. Treasury Board (Correctional Service of Canada)*, 2004 PSSRB 180. On that point, in *Wallis*, at a time when a DPH had an eight-hour value, the adjudicator wrote the following, which well summarizes the jurisprudence:

...

*[37] The Variable hours-of-work scheme is very important for the employees. The grievor argues that the interpretation, as decided by management and Mr. McKenzie in the White (supra) decision, has a perverse effect on employees working a 12-hour shift. However, it cannot provide them with a greater benefit than that provided to the employees working non-variable hours or 8-hour shifts, unless it clearly says so in the Collective Agreement. The claw back is an administrative means to ensure the equity of the scheme for other employees. It cannot be viewed as cheating the employees working on the variable shift, although they may feel that way.*

...

[76] In dismissing the grievances, the adjudicator in *Campbell* concluded as follows:

...

*[37] Those overpayments of work hours are a consequence of the schedule agreed to by the parties. The employer must be reasonable in the way it asks for the overpayments to be reimbursed. According to its policy and to the oral evidence adduced at the hearing, it offers the employees the opportunity to take annual leave, to take leave without pay, or to make up the time by the end of the quarter . . . .*

*[38] On the face, I find those options reasonable. . . .*

...

[77] In the present case, to avoid an overpayment of work hours as in *Campbell*, the employer, rather than deducting the overpayment from the employee's supplemental paycheque, requires the employees to make up the overpayment of work hours by making up the hours or by an appropriate leave credit.

[78] The grievances should be dismissed as the bargaining agent has not proved a contravention of the collective agreement.

### **C. Reply argument of the bargaining agent**

[79] This case is about regularly scheduled hours worked on a designated paid holiday. Those hours should count towards the 600 straight-time hours that variable-shift employees must work over a 16-week period.

[80] The *Arsenault* case is an outlier. The adjudicator in *Public Service Alliance of Canada v. Treasury Board*, at paragraph 26, stated that the adjudicator in *Arsenault* was wrong. In any event, the adjudicator ruled against the grievor on the grounds of lack of proof. *Arsenault* raises more questions than it provides answers.

[81] Officer Wooton stated that he was seeking to avoid an overpayment by adding hours to the schedule. There was no overpayment.

[82] The bargaining agent is not seeking to read language into the collective agreement. Clause 25.13(d) is not ambiguous. It has been interpreted numerous times by the Board. Adjudicators agree that employees working variable hours who work on

a designated paid holiday are entitled to their regular pay and in addition to premium pay at time and a half for their regularly scheduled hours.

### **III. Reasons**

[83] The grievors allege that the employer has contravened article 25 of the collective agreement, governing the administration of variable hours of work, by changing the shift schedule and in so doing failed to appropriately compensate them for designated paid holidays.

[84] The burden of proof of course rests with the bargaining agent to establish a contravention of the collective agreement.

[85] The employer implemented a change in policy with respect to the accounting method for designated paid holidays in July 2011 relying upon a Corporate Compensation directive from Fisheries and Oceans that had been issued in 2009.

[86] According to the employer's interpretation of the clause 25.13(d)(ii) of the collective agreement as reflected in the directive, all of the hours that an employee works on a designated paid holiday which are paid at premium rates are overtime hours as they are authorized hours of work in excess of the normal hours of work.

[87] The 10 or 14 hours worked by an employee on a designated paid holiday do not count towards the 600 hours that VHS workers must work over the 16-week averaging period as they are paid at premium rates on a separate cheque from the biweekly regular paycheque.

[88] As clause 25.13(d)(i) provides that a designated paid holiday shall account for 7.5 hours of straight time, it is the 7.5 hours, the agreed-upon value of the holiday that counts towards the 600 hours of the regular 16-week schedule.

[89] Since the employees regular scheduled hours of work are either 10 or 14 hours there is a gap between the hour value of the designated paid holiday and the regular scheduled hours.

[90] The employee continues to receive his biweekly paycheque representing compensation for the normal workweek and the normal workday without deduction however the employer requires the employee to make up the gap the difference

between the regularly scheduled hours of work and the value of the designated paid holiday by adding the difference to the schedule.

[91] This is the same situation as VHS employees who do not work on the designated paid holiday.

[92] The grievors disagree with the employer's interpretation and take the position that the full 10 or 14 hours actually worked on the regularly scheduled shift on the designated paid holiday should be counted towards the 600 hours the grievors must account for before the end of the 16-week schedule. The grievors should continue to be treated the same way as regularly scheduled employees. All hours worked by regular employees and VHS employees on a designated paid holiday should be credited towards the 600 hours during the 16-week period.

[93] The issue then to be resolved is whether the regularly scheduled hours worked by variable shift employees on a designated paid holiday should be counted towards the 600 hours that must be worked during a 16-week averaging period.

[94] It is trite law that the objective of the adjudicator in the interpretation of the collective agreement is to discover the intention of the parties to the agreement on the matter in dispute. That intention must be gathered from the written instrument, the collective agreement. The function of the adjudicator is to ascertain what the parties meant by the words they have used.

[95] As a rule of construction, the clear words of the collective agreement are to be given their ordinary and plain meaning. If on its face the clause is logical and is unambiguous, the adjudicator is required to apply its language in the apparent sense in which it is used, notwithstanding that the result may be unsatisfactory to one side or the other. See Palmer and Snyder, *Collective Agreement Arbitration Canada*, fifth edition, at pages 22 to 27.

[96] Clause 25.10 of the collective agreement provides that the terms and conditions governing the administration of variable hours of work implemented pursuant to paragraphs 25.04(b), 25.06 and 25.09(g) are specified in clauses 25.10 to 25.13 and that the collective agreement is modified by these provisions. The parties therefore have agreed on a specific regime to govern the terms and conditions of employment of VHS workers.

[97] Clause 25.13(d)(i) of the collective agreement expressly provides in the case of VHS workers that a designated paid holiday shall account for seven decimal five (7.5) hours.

[98] Subparagraph (ii) provides that when a VHS employee works on a designated paid holiday, the employee shall be compensated in addition to the pay for the hours specified in subparagraph (i), at time and one-half, up to his or her regularly scheduled hours worked and at double time for all hours worked in excess of his or her regular scheduled hours.

[99] In my view, the language utilized by the parties in the collective agreement is clear. Subparagraph (i) expressly states that the value of the designated paid holiday is 7.5 hours.

[100] The parties have agreed that VHS employees get a 7.5 hour, day off with pay on account of a designated paid holiday, which are the normal hours of work. Article 32 of the collective agreement also provides that regular employees get a 7.5 hour day off with pay, on account of the designated paid holiday.

[101] Subparagraph (ii) in my view deals solely with the compensation a VHS employee is entitled to be paid when he actually works on a designated paid holiday, namely, pay for the hours specified in subparagraph (i) (7.5), the holiday, and in addition, pay at time and one-half up to his regularly scheduled hours worked and at double time for all hours worked in excess of his regularly scheduled hours.

[102] Ms. Langdon's evidence that the employer is really scheduling a variable-shift worker, who for operational reasons must work on the holiday, to perform overtime duties is consistent with the language used in article 23 as the employee gets a 7.5 hour, day off with pay for the normal hours of work and gets premium pay for all of the hours actually worked on the designated paid holiday which are in excess of the normal hours of work.

[103] The position of the employer that it is the 7.5 hours, the value of the designated paid holiday, that counts towards the 600 hours required to be worked over the 16 week averaging period and not the actual hours worked at premium rates on the designated paid holiday, as those hours cannot be counted as both overtime hours and regular hours is also consistent with the language used in article 23.



[104] The fact that it is the agreed-upon value of the designated paid holiday that is counted towards the 600 hours is also consistent with the fact that VHS employees who are not required to report for work and observe the holiday are credited with the agreed-upon value of the holiday towards the 600 hours. It is not disputed that they must make up the difference between the value of the designated paid holiday and the regularly scheduled hours.

[105] The collective agreement does not contain any provision that entitles VHS employees who work on the designated paid holiday to credit those premium hours worked towards the 600 straight time hours that must be worked or otherwise accounted for over the 16-week averaging period.

[106] However, the parties have expressly agreed that the value of the designated paid holiday is 7.5 hours at straight time rates. They have also agreed that all of the regular scheduled hours worked on a designated paid holiday are to be compensated at premium rates including those hours worked that are in excess of 7.5 hours.

[107] Expressed another way the language in the collective agreement is consistent with the interpretation that all employees be they regular or VHS, whether they work or not on the holiday are credited with 7.5 hours at straight time rates being the agreed-upon value of the holiday. None of the hours actually worked by a regular employee or a VHS employee on a designated paid holiday are counted towards the 37 1/2 hour week in the case of a regular employee or towards the 600 hours in the case of VHS employee as they are paid at premium rates.

[108] As stated in *Arsenault* at paragraph 38, it is beyond an adjudicator's jurisdiction to change collective agreement language. Had the language in the collective agreement provided that the value of the designated paid holiday for VHS employees was equivalent to the regularly scheduled hours actually worked on the holiday that would have been a different matter. Similarly, had the parties not agreed to compensate VHS employees at premium rates for hours worked on a designated paid holiday that are in excess of 7.5, the value of the holiday, that also would have been a different matter. The language utilized by the parties is consistent with the employer's position that as these hours are compensated at premium rates they cannot also be counted as regular hours at straight time rates for the purpose of averaging

[109] The language in my view is not ambiguous. The parties did not argue that the language was ambiguous. Consequently, they did not seek to introduce extrinsic evidence of bargaining history or past practice of the parties as an aid to the interpretation of the collective agreement.

[110] The union argues that the change in accounting post-2011 improperly accounts for the hours worked by the grievors when they are working on a designated paid holiday. VHS employees should be treated in exactly the same way as regular scheduled employees. All hours worked by regular employees and variable shift employees on a designated paid holiday should be credited towards the 600 hours over the 16-week averaging period. This position is consistent with previous case law.

[111] The union relies upon clause 25.11 of the collective agreement, which provides that "... the implementation of any variation in hours shall not result in any additional overtime work or additional payment by reason only of such variation nor shall it be deemed to prohibit the right of the Employer to schedule any hours of work permitted by the terms of this Agreement" and the decisions of this Board in *Mackie, supra*, and *Breau, supra*.

[112] The premise of the union's argument is that it is the actual number of hours worked by a regular employee on a designated paid holiday that is credited towards the 600 hours and that VHS employees should be treated the same way by having the actual number of hours worked credited towards the 600 hours.

[113] Clause 32.01 identifies the days that are designated paid holidays for all employees. Clause 32.05 provides that when regular employees work on the holiday, he or she shall be paid time and one half for all hours worked up to 7.5 hours and double time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday.

[114] However, the employer in the case of both regular and VHS employees does not credit the hours actually worked on the designated paid holiday towards the 600 hours, but credits the agreed-upon value of the holiday 7.5 hours. Of course, in the case of the regularly scheduled employee the number will be the same as the agreed-upon value of the holiday and the normal hours of work are 7.5 hours. In my view both the regularly scheduled employee and the VHS employee are being treated alike as they

are both being credited with 7.5 hours, the agreed-upon value of the holiday towards the 600 hours.

[115] In *Mackie and Breau, supra*, the adjudicators relied upon similar language as that contained in clause 25.11, in the collective agreements there at issue in upholding grievances where the employer sought to recover alleged overpayments by deduction from the grievors' supplementary pay cheques. The employer contended that it was entitled to set off or recover excess hours already paid in the regular pay cheque from the premium pay cheque for the hours worked on the designated paid holiday.

[116] In those cases the parties had agreed on the total compensation owed to the employees for working on the designated paid holiday as well as the total number of hours and the rates at which they were to be compensated

[117] The adjudicator in *Mackie* reasoned that by virtue of the fact the collective agreement provided that the implementation of any variation in hours shall not result in any additional payment by reason of such variation, even though Mr. Mackie had worked a 12-hour shift, he could not receive additional payment simply because he worked the variation in hours. This meant he had to be paid an amount equal to a regularly scheduled 8-hour day, 40-hour a week employee. As a consequence, the adjudicator ruled the grievor's regular biweekly paycheque was no greater than someone working an 8-hour day.

[118] The adjudicator in *Breau, supra*, the facts of which are similar to that of *Mackie*, concluded that the effect of setting off money paid for notional hours worked in a 2-week period off a 6-week cycle against money paid for actual hours worked on a designated paid holiday deprived VHS employees of the compensation to which they were entitled under the collective agreement.

[119] The union argues in this case that the employer is requiring VHS employees who work on the designated paid holiday, despite having worked 10 or 14 hours, to make up an additional 2.5 or 6.5 hours by adding the hours to the schedule or through the deduction of leave credits. It asserts that regular employees and VHS employees are not being treated the same.

[120] In my view, both regular and VHS employees are being treated alike as both are getting the same agreed-upon value for the holiday, namely, 7.5 hours that is being credited towards the 600 hours required to be worked over a 16-week period.

[121] Unlike the situation in *Mackie, supra*, and *Breau, supra*, the employer is not seeking to recover an overpayment from the VHS employee's regular pay or to set off an overpayment against the premium pay for the hours actually worked on the designated paid holiday. The employer acknowledged in argument that the variable shift employees who work a 10- or 14-hour shift on the designated paid holiday could not receive additional compensation or credits for the hours worked at straight time rates. Their biweekly paycheques are the same as regular employees.

[122] I understand that a VHS employee cannot be paid more than a regular employee for performing work at straight time rates on a designated paid holiday in the sense that a VHS employee like a regular employee is paid on his biweekly paycheque as if he worked an average 7.5 hours per day and an average 37.5 hours per week.

[123] However, variable shift employees like regular employees must account for 600 hours over the 16-week averaging period at straight time rates. Given my conclusion that it is the agreed-upon value of the holiday of the designated paid holiday that is to be credited towards the 600 hour averaging period and not the hours actually worked at premium rates I find the practice of the employer to require employees to make up the difference between the value of the designated paid holiday and the regularly scheduled shift by actual work or by an appropriate leave credit to be reasonable.

[124] I do not find a contravention of clause 25.11 of the collective agreement. In my view, the decisions both *Mackie, supra*, and *Breau* are distinguishable on their facts. In this case, the implementation of the variation in hours has not resulted in additional overtime work or additional payment to either class of employee by reason of the variation.

[125] I have sought to give effect to the plain and ordinary language of the collective agreement negotiated by the parties. Any perceived unfairness or inequity resulting from the application of the collective agreement should be resolved at the bargaining table. *Delios v. Canada Revenue Agency*, 2013 PSLRB 133; *Delios v. Attorney General of Canada*, 2015 FCA 117.

[126] While the result in this case is similar to that reached in *Arsenault, supra*, unlike the adjudicator in that case, I have had the benefit of evidence concerning the change in policy of the employer, the Fisheries and Oceans policy with respect to compensation of variable-shift employees on designated paid holidays and evidence from the manager of compensation with respect to the application of the policy. I have also had the benefit of full argument by counsel for the parties. I find no fault with the application of the rules of interpretation of the collective agreement that the adjudicator in that case followed and adopt it.

[127] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**IV. Order**

[128] The grievance is dismissed,

July 15, 2015.

**David Olsen,  
adjudicator**