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*Federal Public Sector
Labour Relations and
Employment Board Act
and Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

ALEX SMOLIC

Grievor

and

**TREASURY BOARD
(Department of Industry)**

Employer

Indexed as

Smolic v. Treasury Board (Department of Industry)

In the matter of an individual grievance referred to adjudication

Before: David Olsen, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievor: James Shields, counsel

For the Employer: Richard Fader, counsel

Heard at Toronto, Ontario,
April 5, 2017.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

A. Background

[1] The grievor, Alex Smolic, occupies a position classified at the EL-05 group and level in his employment as a spectrum management officer at Industry Canada in the Innovation, Science and Economic Development division in Toronto, Ontario. Mr. Smolic and a number of other employees occupying EL positions were required to perform services during the Pan Am Games in 2015 in Toronto.

[2] The bargaining agent, the International Brotherhood of Electrical Workers, Local 2228, takes the position that these employees' scheduled hours of work included scheduled hours of overtime such that they qualified for a meal allowance under the provisions of the collective agreement it entered into with the Treasury Board (expiry date: August 31, 2014; "the collective agreement"). The employer, Industry Canada, paid the meal allowance when the employees worked overtime on Monday to Friday but denied it when they worked overtime on Saturday or Sunday.

[3] The employer takes the position that the grievor and the other ELs were not entitled to a meal allowance under the provisions of the collective agreement as the article entitling an employee to a meal allowance applies only in situations in which overtime is worked immediately following the employee's scheduled hours of work (contiguous to those hours). As the grievor did not normally work on Saturday and Sunday, he had no entitlement to a meal allowance.

[4] The grievance was referred to the Public Service Labour Relations and Employment Board for adjudication on February 5, 2016.

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the Act").

II. Summary of the evidence

[6] The grievance is dated August 28, 2015, and its details are as follows:

...

*Overtime meal allowances were rejected contrary to:
25.05 Except for employees serving abroad with Foreign Affairs and International Trade where current local conditions for payment of meals will continue, employees working overtime will be granted meal breaks and compensated for meals as follows:*

(a) an employee who works three (3) or more hours of overtime immediately before his or her scheduled hours of work shall be provided a paid meal break of up to one-half (1/2) hour duration and be reimbursed his or her expenses for (1) meal in the amount of twelve dollars (\$12)

The following dates were rejected:

Sunday July 12, 2015

(rejection note: "Not entitled to be paid for meals on Sundays")

I worked 9:00am to 9:00pm (11.5 hrs total) (7.5 hrs regular + 4.0 hrs extra time)

& Saturday August 8, 2015

(rejection note: "not entitled to paid meals on weekends")

I worked 9:00am to 9:30pm (12 hrs total) (7.5 hrs regular + 4.5 hours extra time).

I believe the IC HR compensation advisors erred in their interpretation of the collective agreement. The meal allowance fits well into the overall scheme of benefits available in the collective agreement. The purpose of the \$12.00 meal allowance is to ensure that an employee working overtime obtain a meal and is at least partially reimbursed for the cost of purchasing that meal.

The rejections are contrary to agreements made and agreed upon between Management and local Union representatives as demonstrated through the attached emails. The attached emails (Overtime for Pan Am & RE: Overtime calculations sample) were provided to our members of samples of overtime and standby entitlements "as well as" meal provisions as provided through our collective agreement and jointly agreed upon by local Management and Union. Furthermore, two emails (Final Panam Schedule and RE: Para Panam Schedule - Final - version B) containing the Panam and Para Panam schedules were sent by Management to our members which clearly indicate that both the weekday as well as Saturday & Sunday overtime hours were "scheduled hours of work" as stipulated in Article 25.05.

Therefore based on the aforementioned Union/Management agreements and that all overtime hours were “scheduled” by Management, I believe that IC HR, Compensation staff inappropriately denied the \$12.00 meal claims (25.05) that were submitted by numerous ELs and myself.

Finally, if you refer to the emails “Overtime for Pan Am” and “RE: Overtime calculations sample”, the District Director (Mitch St. Jacques) had approved the claims and the compensation advisors rejected his approvals. The overtime was scheduled (re: email attachments -“Final Panam Schedule” and “RE: Para Panam Schedule - Final - version B”) and the hours worked met the criteria as outlined in 25.05 (a), 4.0 extra hours worked (over and above the 7.5 hrs) for July 12, 2015 and 4.5 extra hours worked (over and above the 7.5 hrs) for Aug. 8, 2015.

[Sic throughout]

[7] As corrective action, the grievor requests payments of \$12 for both weekend days, which would have normally been his rest days, for a total of \$24.

[8] The Director General of the Spectrum Management Operations Branch, on behalf of the employer, replied to the grievance at the final level on December 22, 2015. After reciting the details of the grievance and stating that he had reviewed the jurisprudence that the bargaining agent had provided to management, he stated in the reply in part as follows:

...

A careful review of your case and following consultation with the Treasury Board Secretariat (TBS), it has been determined that clauses 25.05 (b) and (c) applies [sic] only in situations where overtime is worked immediately following an employee’s scheduled hours of work (contiguous to). As you do not normally work Saturday and Sunday there is no entitlement under this clause.

Consequently, your grievance is denied. I understand that this is not the decision that you were seeking, however the TBS interpretation on the application of the clause in the collective agreement must govern my decision. Please understand that this decision is based upon the facts relevant to this case and that your contributions towards the success of the department are greatly appreciated.

...

[9] As mentioned earlier, the grievance was referred to adjudication on February 5, 2016. The hearing was held in Toronto on April 5, 2017.

[10] Two witnesses gave evidence, the grievor and Mitch St. Jacques, the director of operations for the Toronto District Spectrum Management Program.

A. Mr. Smolic

[11] Mr. Smolic's position is a working-level position at Industry Canada. He facilitates the use of telecommunications, in particular radio communications. He manages the use of radio frequencies under the *Radiocommunication Act* (R.S.C., 1985, c. R-2) and the *Broadcasting Act* (S.C. 1991, c. 11).

[12] His main duties include licensing, monitoring, and inspections. Dealing with radio interference takes up most of his time, along with enforcement.

[13] An applicant submits an application for a licence for the use of channels. Mr. Smolic studies the application, chooses a channel for the applicant, provides parameters that the applicant must adhere to, and issues a licence. He monitors a number of platforms and studies radio traffic, to better assign channels. He also tracks interference and illegal transmissions. He performs regular inspections on licensees and their use of channel power. He tries to track radio interference sources and to suppress them.

[14] In terms of enforcement, he issues tickets and lays charges. He is also involved in investigating when encrypted television signals are hacked.

[15] In the spring of 2015, Mr. Smolic was on a compressed work schedule. His approved scheduled hours of work were a 4-day workweek of which 3 days comprised 10 hours, commencing at 7:30 a.m. and ending at 6:00 p.m., and the fourth day comprised 7.5 hours. The fifth day was a day off. The total number of working hours during the week was 37.5. This was his normal schedule.

[16] The Pan Am Games and the Parapan Am Games were scheduled to take place in Toronto during the spring and summer of 2015. The Pan Am Games were scheduled for July 10 to 26, 2015, and the Parapan Am Games for August 7 to 15, 2015.

[17] The organizers of the games required a lot of spectrum for their events for security broadcasting and logistical purposes. Temporary licences were issued for several users.

[18] One of the EL employees' duties was to ensure that communications were clear and reliable for the events.

[19] Mike Lang, the Toronto District Office field manager, sent a number of emails to employees with respect to the schedules of work for the Pan Am Games.

[20] On May 25, 2015, he sent them a first draft of an operational schedule prepared by Mr. St. Jacques, the director for Toronto, and Lou Battison, the director for Central and Western Ontario District (CWOD) for the games. He advised that the Parapan Am Games schedule would be distributed closer to the start of those games. The first draft reads in part as follows:

...

The operational period for the Pan Am games will be Monday July 6 to July 26. Here are several items of note for the schedule:

1 This is a first draft copy subject to change - need staff to identify any schedule conflicts so that adjustments can be made

2 All OT and standby will be paid out in cash - no compensatory leave

3 The schedule hours are approximate and may change if events end early subject to how many interference issues are reported

...

The overtime has been scheduled so that it is spread out as evenly as possible amongst interested staff. Please keep in mind that the total overtime hours may change depending on the games schedules and staffing requirements (ie. reported interference cases) as the Games progress.

It is important to note that all overtime must be paid out in cash (no compensatory leave) as specific budget funds have been provided to all departments and must be used only for Games related purposes with subsequent accounting of all funds used. This is similar to the G8/G20.

All travel claims and overtime claims for work done for the games must be kept separate from your regular claims so that we can account for all Games expenditures (travel and OT). Specific instructions on how and who to submit the OT and travel claims to will be provided.

For the days that staff are scheduled to work, staff are expected to adjust their normal work day hours and start the work day at 9 am. It is expected that normally days should be finished by 9:30 pm with the occasional day going to 11pm. Again, times are dependent on the games. If there is an active investigation, the days could go longer. If it's extremely quiet, staff may be sent home early.

...

All work will be prioritized and distributed by the Command Centre Manager as per the schedule. The Command Centre Manager will also make the decision to adjust the schedule (send staff home early or stay late to keep working on an investigation).

...

Please advise Mike Lang or Boakye Koranteng if there are any scheduling issues that need to be re-worked. Between the work shifts for the Pan Am games and the Para Pan Am games, it is our intent to schedule as equitably as possible amongst the staff.

...

[Sic throughout]

[21] On June 8, Mr. Lang sent a second draft of the Pan Am Games schedule. For the CWOD staff, there were no changes. For the Toronto District Office (TDO), he had to make significant changes to accommodate the requests he had received. On June 18, he issued the final version. No changes were identified compared to the last draft schedule. It lists the days of the week from Monday, July 6, to Sunday, July 26, 2015, and indicates the employees who were scheduled for each day and in what capacity.

[22] On or about July 10, 2015, Mr. Lang emailed employees about claims for overtime, meal breaks, and minimum hours of work. Mr. Smolic took what Mr. Lang had drafted and added guidelines for his colleagues to follow to make claims. He sent a copy to Mr. Lang and asked him to vet it. Mr. Lang replied that it looked okay.

[23] Mr. Smolic addressed the revised email to the ELs, stating that samples for overtime calculations were included to help with most questions. They were informed to keep in mind that individual results would vary depending on scheduling and work circumstances. The email lists reference links that include the collective agreement, the travel directive, and “Appendix C - Allowances”. The email reads in part as follows. Mr. Smolic’s guidelines are underlined.

...

Meal Breaks and Meal Claims

If you work 3 or more hours past or before the shifts described below, you are entitled to a 1/2 hour paid meal break and a meal claim of \$12.00 (25.05{a&b})

If you work an additional 4 hours beyond that mentioned above, you are entitled to a 1/2 hour paid meal break and meal claim of \$12.00 (25.05{c})

If you are “called back” as per 28.01 and work 4 hours or more, you are entitled to a 1/2 hour paid meal break and meal claim of \$10.50 (28.04{a})

If you are “called back” as per 28.01 and work 4 hours or more, you are entitled to a 1/2 hour paid meal break and meal claim of \$10.50 (28.04{b})

Please note:

You may only claim a “Treasury Board meal allowance” if you are in “Travel Status” and you should not claim the IBEW meal allowances within the same time frames.

Remember, the above IBEW meal entitlements are eligible for all overtime worked, weekdays or weekends “providing” the sufficient number of hours are worked as noted above and below.

For Weekdays [underlined in the original]

Overtime

The scheduled work day is 9am to 5 pm. This is 7.5 hours and a half hour lunch break.

For hours worked between 5pm and 9:30, the overtime rate is 1.5x. (25.02)

For hours worked after 9:30, the overtime rate will be 2x. (25.02)

Sample Based on 9am to 9:30pm:

Mon. to Fri. >> 7.5 hrs (regular paid time) @ x1.0 + 1/2hr unpaid lunch

4.5hrs OT @ x1.5 [ref. 25.02] + meal claim of \$12.00 [ref. 25.05 {a&b}]

(see above Meal Breaks and Meal Claims for details, 1/2 hour paid meal break already scheduled within shift)

"If" you were approved to work beyond the 12hrs, then anything beyond 12 hrs = x2.0 [ref. 25.02 (b)]

Weekday Standby

1 staff will be assigned standby for the period Monday to Friday (29.05)

The staff member will be scheduled to work from 8am to 4pm

Standby hours will be from 12:01am to 8am and 4 pm to 11:59 pm (29.01)

Sample Mon. to Fri. >> 2 shifts per day x 5 days = 10 shifts = 10hrs claim

Call back

If staff have been called back to work, staff should base their claim according to the applicable items within Section 28. (ie. 28.01 {a,b,i,ii})

1. compensation at the applicable overtime rate for any time worked,
- or
2. compensation equivalent to four (4) hours' pay at the straight-time rate

> **Or**, when "called back" while on Standby, refer to article 29.10.

For Weekends [underlined in the original]

(24.02a)

1. **The first (1st) day of rest shall be the twenty-four (24) hour period commencing at 00:00 on Saturday.**
2. **The second (2nd) day of rest shall be the twenty-four (24) hour period commencing at 00:00 on Sunday.**

Saturday - 1st Day of Rest

The scheduled work day will be from 9am to 9pm

For hours worked between 9am and 5pm the rate is 1.5x. (24.05)

For hours worked after 5pm the rate is 2x. (24.05)

Sample Based on 9am to 9pm:

Sat. >> 7.5 hrs @ x1.5 + 1/2hr unpaid lunch [ref. 24.05]

4 hrs @ x2.0 [ref. 24.05] + meal claim of \$12.00 [ref 25.05 {a&b}]

(see above Meal Breaks and Meal Claims for details, 1/2 hour paid meal break already scheduled within shift)

Sunday - 2nd Day of Rest

The scheduled work day will be from 9am to 9pm

For hours worked, the rate is 2x.(24.06)

Based on 9am to 9pm:

**Sun. >> 11.5hrs @ x2.0+ 1/2hr unpaid lunch [ref. 24.06]
+ meal claim of \$12.00 [ref. 25.05 {a&b}]
(see above Meal Breaks and Meal Claims for details, 1/2
hour paid meal break already scheduled within shift)**

Weekend Standby

1 staff will be assigned standby for the period Saturday 12:01 am to Sunday 11:59 pm Friday (29.06)

Standby hours will be from 12:01am to 8am, 8:01am to 3:59pm and 4 pm to 11:59 pm each day (29.01)

Staff can claim 1 hour for each 8 hour or portion thereof standby shift covered (29.01)

Sample Sat. to Sun. >> 3 shifts per day x 2 days = 6 shifts = 6hrs claim

Call back

If staff have been called back to work, staff should base their claim according to the applicable items within Section 28. (ie.. 28.01 {a,b,i,ii})

3. compensation at the applicable overtime rate for any time worked,
or
4. compensation equivalent to four (4) hours' pay at the straight-time rate

> **Or**, when "called back" while on Standby, refer to article 29.10.

Managers [underlined in the original]

1 Manager will be on duty between 9 am and 10pm Weekdays and standby for the Monday to Friday period 00:00 to 08:00 and 16:00 to 24:00

Sample Based on 9am to 10pm:

**Mon. to Fri. >> 7.5 hrs (regular paid time) @ x1.0 + 1/2hr unpaid lunch
4.5hrs OT @ x1.5 [ref 25.02] + 0.5hrs OT @ x2.0 [ref. 25.02] + meal claim of \$12.00 [ref. 25.05{a&b}]
(see above Meal Breaks and Meal Claims for details, 1/2
hour paid meal break already scheduled within shift)**

Sample Standby Mon. to Fri. >> 2 shifts per day x 5 days = 10 shifts = 10hrs claim

1 Manager will be on duty for Saturday and Sundays from 9am to 10pm and standby for the Saturday and Sunday periods 00:00 to 08:00 and 16:00 to 24:00

Sample Based on 9am to 10pm:**Sat. >> 7.5hrs @ x1.5 + 1/2 hr unpaid lunch [ref.24.05]****5 hrs @ x2.0 [ref. 24.05] + meal claim of \$12.00 [ref. 25.05 {a&b}]****(see above Meal Breaks and Meal Claims for details, 1/2 hour paid meal break already scheduled within shift)****Sun. >> 12.5hrs @ x2.0 + 1/2hr unpaid lunch [ref. 24.06] + meal claim of \$12.00 [ref. 25.05 {a&b}]****(see above Meal Breaks and Meal Claims for details, 1/2 hour paid meal break already scheduled within shift)****Sample Standby Sat. to Sun. >> 2 shifts per day x 2 days = 4 shifts = 4hrs claim**

Managers will follow the weekday and weekend overtime process as above. If managers are working in the standby period, then they would be paid per 28:01 and continue the standby hours till the next shift.

[Sic throughout]

[Bold emphasis in the original]

B. The Pan Am Games

[24] Mr. Smolic was scheduled to work, according to the Pan Am Games schedule, on Sunday, July 12, Monday, July 20, and Thursday, July 23, 2015. He was scheduled to be on standby on Saturday, July 25, and Sunday, July 26, 2015.

[25] He worked on Sunday, July 12, 2015, from 9:00 a.m. until 9:00 p.m. It was normally a day of rest for him.

[26] Mr. Smolic acknowledged that this was work done on a second day of rest for him based on his normal work schedule and that he was compensated at the rate of double time for all hours worked. He claimed a meal allowance of \$12; however, it was ultimately rejected.

[27] He worked Monday, July 20, 2015, from 9:00 a.m. until 9:30 p.m. He claimed 4.5 hours of overtime at time-and-a-half. He worked the same hours on Thursday, July 23, and made a similar claim.

[28] On Saturday, July 25, and Sunday, July 26, 2015, he was on standby at home.

C. The Parapan Am Games

[29] The Parapan Am Games were scheduled to run from August 7 to 15, 2015.

[30] On July 30, 2015, Mr. Lang issued the final Parapan Am Games schedule. Mr. Smolic was scheduled to work on Saturday, August 8, Monday, August 10, and Wednesday, August 12, 2015.

[31] He worked Saturday, August 8, 2015, from 9:00 a.m. to 9:00 p.m. He was paid at the rate of time-and-a-half for 7.5 hours, exclusive of a meal break, and at twice the straight-time hourly rate for hours worked in excess of 7.5. He submitted a claim for a meal allowance of \$12; however, it was ultimately rejected.

[32] He worked Monday, August 10, and Wednesday, August 12, 2015, from 9 a.m. to 9:30 pm.

D. Mr. St. Jacques

[33] In terms of the organizational hierarchy, below Mr. St. Jacques are EL-07 managers, including Mr. Lang, whose positions are in the bargaining unit. Reporting to Mr. Lang are EL-05s, including Mr. Smolic whose position is also in the bargaining unit.

[34] Mr. St. Jacques confirmed that Mr. Smolic worked a compressed schedule and that he is a non-operating employee as defined in the collective agreement. That means his hours of work are not normally scheduled on a rotating shift basis and that his regular duties at his normal workplace do not include maintaining electronic equipment on site.

[35] Mr. St. Jacques confirmed that Mr. Lang supported the bargaining agent's position.

[36] He referred to a similar event that occurred in 2010: the G8 and G20 summits, which required 40 employees to provide spectrum services. Management, including human resources compensation staff, worked with the bargaining agent's representatives at the time and developed a procedure for claiming overtime, meals, and travel. When the prospect of the Pan Am Games arose, the instructions used in 2010 were resurrected and were sent to staff. They outlined the applicable collective agreement clauses and procedures.

[37] In 2015, the compensation branch was no longer involved as it no longer had a representative in Toronto. In addition, the collective agreement had not changed in any material way. It was assumed that everything was fine.

[38] When the employees' claims came in, Mr. St. Jacques had a copy of the schedule. He reviewed the claims and approved them, including those for meal allowances on weekends, based on his experience in 2010.

[39] The meal allowance claims were disallowed by compensation staff in Ottawa. He understood that someone in Human Resources had raised an issue and in turn had raised it with the Treasury Board. He understood that the compensation advisors' position was that no meal allowances were to be paid for work performed on weekends.

III. Summary of the arguments

A. For the bargaining agent

[40] Mr. Smolic is a non-operating employee as defined in clause 2.01(o) of the collective agreement. Before the scheduling for the Pan Am Games, he was working a compressed workweek of Monday to Wednesday at 10 hours per day, Thursday at 7.5 hours, and Friday as an earned day off. His days of rest were Saturday and Sunday (see clause 2.01(f)). His schedule changed around the Pan Am Games, from July 6 to 26, 2015, and around the Parapan Am Games, from August 6 to 16, 2015.

[41] During the Pan Am Games, Mr. Smolic worked Sunday, July 12, Monday, July 20, and Thursday, July 23, 2015, and was standby on July 25 and 26. He was paid a meal allowance as submitted for Monday, July 20, but his claim for a meal allowance for Sunday, July 12 was denied. During the Parapan Am Games, his claim for a meal allowance for Saturday, August 8, was also denied.

[42] The Director had approved the same process for the Pan Am Games and the Parapan Am Games as was used for the G8 and G20 summits in 2010 in Toronto.

[43] The Treasury Board denied compensation for the meal allowances. Its reasons for doing so are not known. The grievance reply states as follows:

...

... it has been determined that clauses 25.05 (b) and (c)

applies [sic] only in situations where overtime is worked immediately following an employee's scheduled hours of work (contiguous to). As you do not normally work Saturday and Sunday there is no entitlement under this clause.

...

[44] Is the employer saying that a meal allowance is payable only when an employee works overtime on a weekday but not when he or she works overtime on a weekend? The assumption is that the employer is taking the position that an employee cannot receive a meal allowance if he or she works overtime on a Saturday or Sunday.

[45] In *Beese v. Treasury Board (Canadian Grain Commission)*, 2012 PSLRB 99 at paras. 23 and 24, Adjudicator Shannon outlined the modern Canadian approach to interpreting collective agreements in part as follows:

[23] ... The modern principle directs interpreters to consider the entire context of the agreement, read its words in their entire context and in their grammatical and ordinary meaning, harmoniously with the scheme and object of the agreement and the intention of the parties.

[24] To understand the entire context of the collective agreement, one provision cannot be understood without understanding its connection to the whole agreement. What is written in one provision is often qualified or modified elsewhere....

[46] The focus is on the words in the collective agreement in their grammatical sense.

[47] Article 23 deals with hours of work. Clause 23.04 provides that the normal scheduled hours of work for non-operating employees is 37.5 hours per week, consisting of 5 consecutive days from Monday to Friday of 7.5 hours each between 7:00 a.m. and 6:00 p.m., exclusive of a meal break.

[48] Mr. Smolic was working variable hours under the provisions of clause 23.17, which permits employees, with the employer's approval, to complete their weekly hours of employment in a period of other than 5 full days, provided they work an average of 37.5 hours per week.

[49] Article 24 deals with days of rest, which are to be scheduled on consecutive calendar days and to consist of two or more days. Clause 24.02(a) provides that for

non-operating employees, the first day of rest is the 24-hour period commencing at 00:00 on Saturday and that the second day of rest is the 24-hour period commencing at 00:00 on Sunday.

[50] Clause 24.05 provides that if an employee is required to work on a day of rest, then he or she is to be paid at time-and-a-half for the first 7.5 hours worked, exclusive of a meal break, and at double the employee's rate for all hours worked in excess of 7.5.

[51] Clause 24.06 provides that if the employee is required to work on a consecutive and contiguous second day of rest, then he or she is to be paid at double time.

[52] Article 25 deals with overtime. Clause 25.01 provides that an employee is to be paid at his or her straight-time hourly rate for all work performed during the regularly scheduled hours, which embrace not more than two hours of the latter part of the day designated as a holiday or not more than two hours of the latter part of a second day of rest, and not more than two hours at the beginning of the following day.

[53] The overtime article speaks of days of rest and provides a formula.

[54] Clause 25.05 deals with meal breaks and allowances. Employees serving abroad with Foreign Affairs and International Trade (now Global Affairs Canada) are the only exception to the entitlement for meal breaks and compensation for meals for employees working overtime.

[55] Clause 25.05(b) provides that an employee who works 3 or more hours of overtime immediately following his or her scheduled hours of work shall be provided a paid meal break of up to a half-hour and shall be reimbursed his or her expenses in the amount of \$12.

[56] The phrase used is "scheduled hours of work". It is a universal concept. It is not limited by any modifier, such as "regular", "normal", etc. There is no definition of that phrase in article 23. Clause 23.03 refers to "normal hours of work", and clause 23.04 refers to "normal scheduled hours of work".

[57] The clear and unambiguous language of clauses 25(a) and (b) is that if an employee works on any given day in excess of 3 or more hours of overtime following his or her scheduled hours of work, then the employee will be entitled to a paid meal

break of a half-hour and will be reimbursed a meal allowance of \$12. This was recognized by the employer in 2010.

[58] The employer will argue that employees can receive a meal allowance only during the week. If an employee works overtime on a Saturday or Sunday, then he or she is not entitled to a meal allowance because the day-of-rest provision does not provide for one.

[59] There has been a history of the employer taking this position, arguing that the clause, like the day-of-rest article, was unique and was not incorporated into the overtime clause, as a basis for denying meal allowances to employees.

[60] In *Julien v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 67, the former Public Service Labour Relations Board upheld a grievance for a meal allowance; the grievor had been scheduled to work overtime on a designated holiday.

[61] Article 28 of the collective agreement in that case provided that an employee who worked three or more hours of overtime immediately before or immediately following his or her scheduled hours of work was to be reimbursed his or her expenses for a meal.

[62] Article 30 of that collective agreement dealt with work performed on a holiday, which provided that the employee was to be paid at time-and-a-half for all hours worked up to 7.5 hours and at double time after that in addition to the pay that the employee would have been granted had he or she not worked on the holiday.

[63] The employer argued that the collective agreement article pertaining to holidays and the one pertaining to overtime were independent of each other that each was clear, precise, and complete. It argued that had it and the bargaining agent wanted them to be interrelated, they would have made it clear in the collective agreement.

[64] Upholding the grievance, the adjudicator stated as follows at paragraphs 19 and 20:

19 Clause 28.09 of the collective agreement provides that a meal allowance of \$9 is to be paid to employees who work at least three hours of overtime immediately after or immediately before their scheduled hours of work. This is exactly what happened to the grievor on December 27, 2003. Accordingly, the employer should pay him a meal allowance

of \$9, which it did not do.

20 The employer's reason for denying the allowance is that clause 28.09 of the collective agreement does not apply to overtime performed on a holiday because that time is paid under article 30 and not article 28. According to the employer, if the CCRA and the grievor's bargaining agent had wanted to pay the meal allowance for a holiday, a reference to clause 28.09 would have been included in clause 30.08. I do not agree. If the parties to the collective agreement had wanted to exclude payment of the meal allowance for overtime performed on a holiday, they would have made note of that in either clause 28.09 or 30.08. They did not do so.

[65] In this case, the overtime article is the governing article. The employer failed to incorporate any limitation with respect to the meal allowance into either of articles 24 or 25.

[66] In *Latour v. Treasury Board (Canada Border Services Agency)*, 2010 PSLRB 50, a number of border service officers worked a designated holiday and additional hours either immediately before or immediately following their scheduled hours of work at the employer's request. All of them were denied meal allowances.

[67] The employer advanced the same argument as was advanced in *Julien*, namely, if the intent had been to pay a meal allowance on a designated holiday, then the meal allowance article would have included a reference to the article dealing with work on a designated holiday.

[68] Allowing the grievance, the adjudicator recited paragraph 20 from *Julien* and stated at paragraph 16 as follows:

[16] *I agree with that reasoning. The wording of the collective agreement appears clear to me. Employees are entitled to be paid for a meal when they work three hours of overtime immediately before or immediately following their hours of work, whether on a regular day of work or a designated holiday. I find no indication to the contrary in the wording of the collective agreement.*

[69] Similarly, in *Beese*, the grievors alleged that the employer breached the overtime provisions of the relevant collective agreement by refusing to reimburse them a meal allowance when they worked on November 11, 2008, a designated paid holiday listed in that collective agreement.

[70] Adjudicator Shannon followed the ratio in the *Julien* decision, concluded that the grievors had all worked 3 or more hours beyond their regular or normal 7.5-hour shifts on November 11, 2008, and determined that they were entitled to the meal allowance.

[71] Note clause 25.05 and the schedules for both the Pan Am Games and the Parapan Am Games. On the days in question, Mr. Smolic worked three or more hours of overtime after his scheduled hours of work. Clauses 25.05(a) and (b) are not ambiguous. He was entitled to a meal allowance both on a regular day and on a day of rest.

B. For the employer

[72] The issue in this case is not whether it is a good idea to provide a meal allowance to Mr. Smolic for his work on a day of rest but rather what the parties agreed to at the bargaining table.

[73] Arbitral and adjudication decisions in *Massey-Harris Co. v. U.A.W., Local 458* (1953), 4 L.A.C. 1579; *Cardinal Transportation British Columbia Inc. v. Canadian Union of Public Employees, Local 561* (1997), 62 L.A.C. (4th) 230; *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55; and *Golden Giant Mine v. United Steelworkers of America, Local 9364*, [2004] O.L.A.A. No. 600 (QL), stand for the proposition that a monetary benefit must be expressly granted.

[74] After an internal discussion, the Treasury Board directed the Department to adopt its interpretation of the collective agreement.

[75] In *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112, the adjudicator had to deal with the fact that local managers in one workplace had adopted a practice of granting shift and weekend premiums to research scientists who generally had a day schedule for hours worked aboard research vessels. The adjudicator ruled that the practice could not be used as an interpretive aid in the event that the collective agreement was ambiguous as it was no evidence that the practice was widespread or that the Treasury Board was aware of it.

[76] In terms of interpreting the collective agreement, there is no dispute that Mr. Smolic was a non-operating employee working a compressed workweek.

[77] Clause 23.04(a)(i) provides that the normal scheduled hours of work for a non-operating employee are 37.5 hours in a week consisting of 5 consecutive days, Monday to Friday inclusively, and that each workday is to be 7.5 hours, exclusive of a meal break. That is, the employee is not paid for a meal break.

[78] There is no question that clause 24.02 applied and that the grievor's days of rest were the 24-hour period commencing at 00:00 on Saturday and the 24-hour period commencing at 00:00 on Sunday.

[79] This fact distinguishes the circumstances in this case from those in *Julien*, which dealt with a designated paid holiday.

[80] Clause 24.05 is the provision dealing with how work performed on a day of rest is compensated, which is at 1.5 times an employee's straight-time hourly rate for the first 7.5 hours (exclusive of a meal break) and at double the employee's straight-time hourly rate for all hours worked in excess of 7.5.

[81] Clause 24.06 deals with how work performed on a consecutive and contiguous day of rest, i.e., a Sunday, is to be compensated. Work performed on Sunday is paid at twice the straight-time hourly rate.

[82] This is exactly what happened to Mr. Smolic. On Saturday, August 8, 2015, he was compensated for 7.5 hours of work at time-and-a-half and 4.5 hours at twice his straight-time rate. On Sunday, July 12, 2015, he was compensated at double time for all hours worked that day. The payments he received for working on both dates were not on account of overtime but were for work performed on days of rest. The claim in this case for meal allowances hinges on Mr. Smolic having worked overtime.

[83] Clause 25.01, the overtime provision, provides that an employee is to be paid at his or her straight-time hourly rate for all work performed during the employee's regularly scheduled hours of work.

[84] The grievor did not receive pay at his straight-time rate for 7.5 of the scheduled hours of work on July 12 or August 8, 2015. He received payment under clauses 24.05 or 24.06 of the collective agreement. Had he been compensated under clause 25.01, the overtime provision, he would have received less money.

[85] Clause 25.05 is conditional on employees working overtime to be granted meal breaks and allowances. The grievor was not working overtime; he was working on a scheduled day of rest. Clause 24.05, which deals with how work performed on a day of rest is to be compensated, contemplates the fact that there will be a meal break (exclusively a meal break); however, the employee will not be paid for it.

[86] In *Julien*, there was an assumption that an overtime situation existed.

C. The bargaining agent's reply

[87] There is no ambiguity in clauses 25.05(a) and (b) just as there is no ambiguity in clauses 24.05 and 24.06. If an employee works on a second day of rest, then he or she receives a meal break.

[88] Clause 23.04, dealing with the normal scheduled hours of work for non-operating employees, provides that each workday is 7.5 hours, exclusive of a meal break. Employees receive a break, but it is not paid. This same phrase is used in clause 24.05. Employees receive a break, but it is not paid because it is dealt with in clause 25.05.

[89] In clause 25.01, the parties specifically reference a day of rest. An employee is compensated at straight time for work performed during regularly scheduled hours unless the work extends into a day of rest for a period of greater than two hours.

[90] Clause 25.05 specifies that a payment for a meal allowance provides the premium for lunch.

IV. Reasons

[91] At the outset of the analysis, it is important to remember that although the bargaining agent and the department initially agreed upon the interpretation to be given to the collective agreement following the practice that they had employed in 2010 during the G8 and G 20 summits, in the case of departments, it is the Treasury Board, representing Her Majesty in right of Canada, that is the “employer” (see s. 2 of the *Act*). Therefore, the Treasury Board is acting within its prerogative in articulating the employer position with respect to the interpretation or application of the collective agreement.

[92] The modern principle of interpretation directs that the words of a collective agreement be read in their entire context and in their grammatical and ordinary meaning, harmoniously with the scheme and the object of the agreement and the intention of the parties.

[93] As stated by Adjudicator Shannon in *Beese*, at para. 24:

[24] To understand the entire context of the collective agreement, one provision cannot be understood without understanding its connection to the whole agreement. What is written in one provision is often qualified or modified elsewhere....

[94] In this case, Mr. Smolic grieves a violation of clauses 25.05(a) and (b) of the collective agreement.

[95] Article 25 of the collective agreement is entitled "Overtime". The relevant provisions of the article read as follows:

25.01 An employee shall be paid at his or her straight time hourly rate for all work performed during his or her regularly scheduled hours of work, including all work performed during regularly scheduled hours of work which embraces not more than two (2) hours of the latter part of the day designated as a holiday or not more than two (2) hours of the latter part of a second (2nd) day of rest, and not more than two (2) hours at the beginning of the following day.

25.02 Each completed six minute period of overtime shall be compensated for at the following rates:

- (a) time and one half (1 1/2) for hours worked other than provided in 25.01;*
- (b) notwithstanding clause 25.01, double (2) time for all hours worked in excess of twelve (12) in a continuous period of work, or, in excess of twelve (12) hours of work in a day. This section shall not apply to article 27 "Travel", except as specifically provided in article 27;*
- (c) an authorized break of up to one (1) hour will not be considered as breaking the continuity of hours worked in order to qualify under paragraph 25.02(b)*

25:03 "Time and one half" is one and one half (1 ½) Times the straight- time hourly rate.

25:04 *“Double time” is twice (2x) the straight time hourly rate.*

25.05 *Except for employees serving abroad with Foreign Affairs and International Trade where current local conditions for payment of meals will continue, employees working overtime will be granted meal breaks and compensated for meals as follows:*

- (a) *an employee who works three (3) or more hours of overtime immediately before his or her scheduled hours of work shall be provided a paid meal break of up to one-half (1/2) hour duration and be reimbursed his or her expenses for one (1) meal in the amount of twelve dollars (\$12);*
- (b) *an employee who works three (3) or more hours of overtime immediately following his or her scheduled hours of work shall be provided a paid meal break of up to one-half (1/2) hour duration and be reimbursed his or her expenses for one (1) meal in the amount of twelve dollars (\$12)*

[96] The provisions are clear that employees are entitled to a meal allowance if they work three hours of overtime either immediately before or following their scheduled hours of work.

[97] What then are the grievor’s scheduled hours of work?

[98] As in the collective agreement at issue in *Beese*, there is no definition of “scheduled hours” in the collective agreement in this case.

[99] Clause 25.01 of the overtime article provides that an employee shall be paid at his or her straight-time hourly rate for all work performed during his or her “regularly scheduled hours”. Clause 25.02 provides for the payment of premium rates of overtime for hours worked other than the hours referred to in clause 25.01.

[100] Clause 23.04(a)(i) provides as follows:

Normal scheduled hours of work for non-operating employees shall be thirty-seven decimal five (37.5) hours per week consisting of five (5) consecutive days, Monday to Friday inclusive, each day to be seven decimal five (7.5) hours (exclusive of a meal break) between the hours of 07:00 and 18:00 local time.

[101] When faced with a similar issue in *Beese*, Adjudicator Shannon concluded that there was no indisputable definition of the term “scheduled hours of work” in the collective agreement at issue and that therefore, it had to be given its ordinary meaning, one that was harmonious with the scheme and object of the collective agreement and the parties’ intentions. In that case, she concluded that it referred to the hours that an employee was normally, usually, and typically scheduled for work, an interpretation that I adopt in this case as well.

A. Overtime

[102] Clause 25.05 provides that employees working “overtime” will be granted meal breaks and will be compensated for meals in accordance with clauses 25.05(a) and (b). Both of those clauses are conditional upon an employee working three or more hours of “overtime” either immediately before or following his or her “scheduled hours of work”. The word “overtime” is not defined in the collective agreement.

[103] Clauses 25.01 and 02 provide for the payment of premium rates for periods of overtime for hours worked other than during an employee’s regularly scheduled hours of work. This is consistent with the common understanding of the word “overtime”. Collective agreements generally provide that overtime rates are to be paid for work performed outside an employee’s daily hours. See Brown and Beatty, *Canadian Labour Arbitration*, Fourth Edition, at chapter 8-2100.

[104] Article 25, the overtime article, must be read as a whole. Clause 25.01 provides that regularly scheduled hours of work must be paid at the straight time hourly rate. Overtime must be compensated at the rates set out in clause 25.02 for hours worked other than the regularly scheduled hours of work as provided in article 25.01. Meal breaks and reimbursement for expenses for meals are to be paid to employees who work three or more hours of overtime immediately before or following their scheduled hours of work (clause 25.05).

B. Applying these principles to the facts

[105] For which hours was Mr. Smolic normally, usually, and typically scheduled for work, which would constitute his “scheduled hours of work?”

[106] Mr. Smolic, a non-operating employee, was on a compressed work schedule. His approved normal scheduled hours of work were 37.5 hours per week over 4 days.

Three of the days, Monday to Wednesday, comprised 10 hours; they started at 7:30 a.m. and ended at 6:00 p.m. The fourth day, Thursday, comprised 7.5 hours. The fifth day, Friday, was an earned day off.

[107] As a non-operating employee, Mr. Smolic's scheduled days of rest consisted of two days per week, the first day being the 24-hour period commencing at 00:00 on Saturday and the second day being the 24-hour period commencing at 00:00 on Sunday (clause 24.02(a)).

[108] Mr. Smolic worked on Sunday, July 12, 2015, from 9:00 a.m. until 9:00 p.m., which was a scheduled day of rest. He was compensated at the rate of double time for all hours worked, in accordance with the provisions of clause 24.06, which establishes the rate of pay for work performed on a second day of rest. He made a meal allowance claim under clause 25.05, which was denied.

[109] In my view, Mr. Smolic was not entitled to claim a meal allowance under clause 25.05 as he had not worked overtime within the meaning of article 25. That is, the work he performed was not in excess of his regularly scheduled hours of work on the days when those hours occur (i.e., Monday to Thursday in his case). He was working on his scheduled day of rest.

[110] Mr. Smolic also worked on Saturday, August 8, 2015, from 9:00 a.m. to 9:00 p.m. Saturday also was a scheduled day of rest for him. He was paid at the rate of time-and-a-half for 7.5 hours and twice the straight-time hourly rate for hours in excess of those, in accordance with the provisions of clause 24.05, which establishes the rate of pay for work performed on a first day of rest.

[111] In my view, Mr. Smolic was not entitled to claim a meal allowance for that day as well as he did not work overtime within the meaning of article 25. Again, he was working on his scheduled day of rest and not his regularly scheduled work hours.

[112] On both weekend days, he was not compensated at his regular rate for any "regularly scheduled hours of work." All of the hours worked on Sunday, July 12, 2015, were compensated at two times the regular rate and all hours worked on Saturday, August 8, 2015, were compensated at time and a half for 7.5 hours and double time for hours in excess of those. There were no regularly scheduled hours of work worked that were paid at his straight time hourly rate on either day (i.e., not hours for which he

would normally, usually, and typically be scheduled for work). It follows that the hours worked on those days in excess of 7.5 were not overtime hours within article 25's meaning and he was not entitled to the meal allowance.

[113] I distinguish the facts in this case from those recited in *Julien*, *Latour*, and *Beese*. In those cases, I understand that the grievors were required to work on a designated holiday, which but for the holiday would have been a regularly scheduled day of work. In those circumstances, those employees would have been entitled to payment for a meal when they worked three hours of overtime immediately before or following their regularly scheduled hours of work.

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

(The Order appears on the next page)

V. Order

[115] I dismiss the grievance.

April 26, 2018.

**David Olsen,
a panel of the Federal Public Sector
Labour Relations and Employment Board**