

Public Service Staff
Relations Act



Before the Public Service
Staff Relations Board

BETWEEN

RONALD J. HUGH

Grievor

and

TREASURY BOARD
(Human Resources Development Canada)

Employer

Before: J. Barry Turner, Board Member.

For the Grievor: Dan Rafferty, Counsel

For the Employer: Richard Fader, Counsel

Heard at Kingston, Ontario,
January 12, 1999.

DECISION

Mr. Ronald Hugh, a CS-2 Software Analyst, Information Technology Centre (ITC), Human Resources Development Canada (HRDC), Belleville, Ontario, is grieving his employer's denial of stand-by pay under paragraph 10.04(b) of the Group Agreement between the Treasury Board and the Professional Institute of the Public Service of Canada (PIPSC), Computer Systems Administration, Code: 303/88. His grievance reads:

I was denied my normal compensation under Article 10.04(b) for stand-by services. We regularly perform 2 periods of (8) hours stand-by each night... From 16:00 to 24:00 and from 00:00 to 08:00. I received two requests to report for duty, one during the first period, and one during the second period, but was denied compensation for the second request to report.

Paragraph 10.04(b) reads:

10.04 An employee on stand-by duty who is required to report for work shall be paid, in addition to the stand-by pay, the greater of:

(a) the applicable overtime rate for the time worked,

or

(b) the minimum of three (3) hours' pay at the applicable rate for overtime; except that this minimum shall only apply once during a single period of eight (8) hours' stand-by duty.

Mr. Hugh is requesting the following corrective action:

That all pay and benefits be awarded to me for the above incident, according to the stand-by regulations already established in the contract.

The following Agreed Statement of Facts was submitted by the parties:

AGREED STATEMENT OF FACTS

...

1. The grievor, Ron Hugh, was at all relevant times employed by Human Resources Development Canada as a Software Analyst at the Information Technology Centre, Belleville, Ontario.

2. Mr. Hugh is a member of the Computer Systems Administration (CS) bargaining unit. His position is classified at the CS-02 level.

3. Beginning at 16:00 hours on Monday, January 20, 1997, Mr. Hugh was on stand-by duty for a period of sixteen (16) consecutive hours which ended at 08:00 hours on Tuesday, January 21, 1997. This period of stand-by duty was governed by Article 10 of the CS Collective Agreement (expiry date April 30, 1990 and further extended by legislation to April 30, 1997).

4. During this period of stand-by duty on January 20-21, 1997, Mr. Hugh received two telephone calls at his home which required him to provide technical advice and expertise. The first call was received by Mr. Hugh at 22:00 hours on January 20; the second was received at 04:00 hours on January 21.

5. In receiving and responding to these telephone calls, the parties agree that Mr. Hugh "reported to work" within the meaning of Article 10.04 of the CS collective agreement, and was therefore eligible to receive additional compensation as per Article 10.04(b). Mr. Hugh received 3 hours' pay at the applicable rate of overtime for the call at 22:00 and 30 minutes' pay (the duration of the phone call) at the applicable overtime rate for the call at 04:00.

6. The parties are in disagreement over the amount of the additional compensation to which Mr. Hugh is entitled pursuant to Article 10.04(b).

7. The parties reserve the right to adduce additional oral and documentary evidence as required.

Summary of Evidence

1. Dale Ducarme, Director, ITC identified a memorandum (with attachments) he wrote on 12 July 1996 and that was sent to a number of people, including the grievor, regarding Stand-By Reporting Procedures in the Belleville ITC (Exhibit E-1). The memorandum reads:

We have recently been advised by Staff Relations that Treasury Board's interpretation of the Standby Clause, Article 10, in the CS Collective Agreement, is that CS employees receive a minimum payment of three hours at the applicable overtime rate once in an eight hour period, with that eight hour period being CALCULATED FROM THE TIME OF THE FIRST CALL.

In order to ensure consistency in reporting and compensation, we have attached Standby Reporting Instructions for use by all CS employees. Examples are also provided for some situations. It is important to add the

narrative comments on the EIS form to explain the code/hours being reported.

Should you have any questions, please contact your Pay Advisor.

NB: These instructions apply to employees in the CS group only. Questions regarding any other group should be directed to Pay and Benefits.

[Emphasis in the original]

Mr. Ducarme testified that it was normal to run a 16-hour period as one continuous period of time and that it was common practice for a CS to be on stand-by for 16 consecutive hours.

During cross-examination, Mr. Ducarme agreed that Exhibit E-1 was a Treasury Board interpretation of Article 10 and was not his own interpretation at the time.

Argument for the Grievor

Mr. Rafferty said the first time he ever saw Exhibit E-1 was at the hearing. He then read the following argument into the record:

The grievor, Mr. Hugh, asserts that as a result of his reporting to work due to the two call-backs referred to in paragraph 4 of the Agreed Statement of Facts, he should have received additional compensation in the form of the minimum of three hours' pay at the applicable overtime rate for each of the times he reported. As noted in the second sentence of paragraph 5 of the Agreed Statement of Facts, Mr. Hugh was paid the 3 hours' pay for the first telephone call he received at 22:00 hours, but was compensated only for the actual duration of the second call at 04:00 hours.

In our view, the language of Article 10.04 is clear and unambiguous. It requires that an employee who is required to report to work shall be paid, in addition to the stand-by pay, the greater of:

a) the applicable overtime rate for the time worked,

or

b) the minimum of three (3) hours' pay at the applicable rate for overtime; except that this minimum shall apply only once during a single period of eight hours' stand-by duty.

Since there is no disagreement between the parties that clause 10.04(b) applies here, the question to be asked is, "on what basis does the employer purport to deny Mr. Hugh the 3-hour minimum for the second call-back?" Mr. Hugh began his stand-by on January 20 at 16:00 hours; his first call was at 22:00 hours. The first period of 8 hours of stand-by, in our view, clearly began at 16:00 and ended at 24:00 hours. Mr. Hugh received 1 call during that 8-hour period and was properly compensated within the context of 10.04(b).

The next 8-hour period of stand-by began, in our view, on January 21, 00:00 hours and ended at 08:00 hours on January 21. Mr. Hugh received 1 call during this period, at 04:00 hours, and based on the language of clause 10.04(b), he should have received the minimum 3 hours' additional compensation.

I will leave it to the employer's counsel to provide the detailed rationale for denying Mr. Hugh the minimum 3 hours' additional compensation. At this point I will say only that, based on the second-level grievance reply to Mr. Hugh, the rationale appears to involve a Treasury Board interpretation that stipulates that stand-by periods are not considered to consist of 8-hour shifts in the case of employees in the CS group. Rather it would appear, according to this interpretation, that "telephone calls received during such a stand-by period are compensated once during an 8-hour period commencing at the time the first call was received." If indeed this excerpt from the second level response accurately reflects the employer's rationale in this case, I would comment that whoever is responsible for the interpretation gets high marks for creativity and wishful thinking, but a failing grade in contract interpretation.

If we look at what clause 10.04(b) actually says, it will be seen that the condition which governs whether or not the minimum of 3 hours' pay will apply is that "the minimum shall apply only once during a single period of 8 hours' stand-by duty." There are no words in that clause which could logically or rationally lead to the conclusion that the starting point for the 8-hour period is the time that the first call is received. I think it is fair to say that if the parties had intended this to be the way that the article is to be interpreted, they could have and would have included the appropriate language.

As an example of the type of language that could have been used, please refer to Article 8.03, which deals with reporting pay in the context of overtime:

When an employee is required to report for work on a day of rest or a designated paid holiday, he shall be paid the greater of:

(a) (i) *compensation at the applicable overtime rate,*

or,

*(ii) compensation equivalent to 4 hours' pay at his hourly rate of pay, except that the minimum of 4 hours' pay shall apply the first time only an employee is required to report for work during a period of 8 hours, **starting with the employee's first reporting.***

There are clearly no such similar conditions or qualifiers in clause 10.04(b). Based on this, it is our submission that Mr. Hugh should have received additional compensation for his second call, at 04:00 hours on January 21, 1997, in the amount of 3 hours' pay at the applicable rate for overtime.

Mr. Rafferty referred me to Clause 8.03 (Reporting Pay) of the CS Group Agreement and compared it to the Public Service Alliance of Canada (PSAC) Master Agreement, paragraph M-30.04(b). He submitted that these two provisions were using similar language. He concluded that the parties could have used similar language in the CS Agreement, paragraph 10.04(b) if they wanted to.

The CS Agreement, clause 8.03, (Reporting Pay), reads:

8.03 Reporting Pay

When an employee is required to report for work on a day of rest or a designated paid holiday, he shall be paid the greater of:

(a) (i) *compensation at the applicable overtime rate,*

or

(ii) *compensation equivalent to four (4) hours' pay at his hourly rate of pay, except that the minimum of four (4) hours' pay shall apply the first time only an employee is required to report for work during a period of eight (8) hours, starting with the employee's first reporting.*

(b) *If an employee is given instructions during his work day, to work non-contiguous overtime on that day and works such overtime he shall be paid for the time actually worked, or a minimum of two (2) hours' pay at straight time, whichever is the greater.*

The PSAC Master Agreement, clause 30.04 reads:

M-30.04 An employee on standby who is required to report for work shall be paid, in addition to the standby pay, the greater of:

(a) the applicable overtime rate for the time worked,

or

(b) the minimum of four (4) hours' pay at the hourly rate of pay, except that this minimum shall apply only the first time that an employee is required to report for work during a period of standby of eight (8) hours.

Mr. Rafferty concluded that Mr. Hugh should have received three hours of stand-by pay for the second call he attended to on January 21 at 04:00 hours, instead of 30 minutes.

Argument for the Employer

Mr. Fader argued that what I have to accept, is the fact that two eight-hour blocks of time should run together. He argued, for comparison purposes, the linkage between the PSAC Master Agreement, clause 30.01, that speaks of eight-hour periods that run consecutively, and paragraph 30.04(b), that speaks of the minimum of four hours' pay that applies only the first time that an employee is required to report during a period of stand-by of eight hours. He argued, comparing this to the CS Group Agreement, at clause 10.01 and paragraph 10.04(b), there is no mention of consecutive eight-hour blocks, that is, paragraph 10.04(b) stands alone. He said a stand-by period could in fact be a whole weekend and that the reference in paragraph 10.04(b) to the words "single period" makes it stand alone. He argued this is a limiting provision that does not allow anyone to be called every 15 minutes and get three hours' overtime pay. He added perhaps the language could be clearer, but what is before me is what was written by the parties.

Mr. Fader said the grievor must establish that he was on stand-by for two blocks of time, but as the statement of facts says, Mr. Hugh was on stand-by for 16 consecutive hours that were not divided into two eight-hour blocks as in the PSAC Master Agreement.

Counsel argued clause 8.03 of the CS Group Agreement is not relevant. He added we are not dealing with a statutory interpretation, that Mr. Hugh was properly compensated, and I should therefore dismiss the grievance.

Rebuttal Argument for the Grievor

Mr. Rafferty argued clause 30.01 of the PSAC Master Agreement merely sets up a scheme for payment, and that the CS Group Agreement has a different approach. He could therefore see no need to link the consecutive hours in the Master Agreement to the CS Group Agreement. He also asked me to use common sense in my interpretation even though the word “consecutive” is missing from paragraph 10.04(b). He reminded me Mr. Hugh was on stand-by from 16:00 hours one day to 08:00 hours the next day. Mr. Rafferty concluded that clause 10.04(b) must be interpreted on its own, and I cannot read in eight-hour blocks running from the time of the first call.

Decision

The Treasury Board interpretation in Exhibit E-1, “calculated from the time of the first call”, is nothing more than an interpretation. I must look only at the ordinary meaning of the wording of clause 10.04(b) of the CS Group Agreement, and not at any other collective agreement. In doing this, I have concluded that this grievance must be allowed. Paragraph 10.04(b) reads in part: “minimum shall apply only once during a single period of 8 hours’ stand-by duty.” There is no indication, as the Treasury Board interpretation suggests, that an eight-hour period is “calculated from the time of the first call.”

Even though the parties agreed Mr. Hugh was on stand-by duty for 16 consecutive hours, Mr. Hugh’s first single period of eight hours of stand-by duty was 16:00 – 24:00 hours on January 20, 1997. He received a call at 22:00 hours, for which he was properly compensated. His second period of eight hours of stand-by duty was 00:00 – 08:00 hours on January 21, 1997. He received a call at 04:00 hours, for which he was compensated for the length of the call which lasted 30 minutes. I believe he should have been compensated the equivalent of three hours for his second call, as per the ordinary meaning of paragraph 10.04(b).

This grievance is therefore allowed and I order the employer to compensate Mr. Hugh an additional 2 hours 30 minutes for the call at 04:00 hours on January 21, 1997.

**J. Barry Turner,
Board Member.**

OTTAWA, February 5, 1999.