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**File:** 166-2-29584

**Citation:** 2000 PSSRB 94



Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

**RÉJEAN GIASSON**

Grievor

and

**TREASURY BOARD  
(Fisheries and Oceans)**

Employer

***Before:*** Evelyne Henry, Deputy Chairperson

***For the Grievor:*** David J. Jewitt, Counsel

***For the Employer:*** Guy A. Blouin, Counsel

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Heard at Ottawa, Ontario,,  
June 20 and 21, 2000.  
(Written submissions filed on July 17, August 14 and August 25, 2000.)

## DECISION

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[1] Réjean Giasson is a Chief Engineer working for the Canadian Coast Guard since 1974. On February 23, 1999, he reported to work on board the “CCGS George R. Pearkes” at 10:30 a.m., to meet with the Chief Engineer going off duty at 12 noon.

[2] Mr. Giasson claimed pay at the normal rate of pay and accumulation of a portion of lay-day credits for the period worked.

[3] The employer denied his request, claiming hours worked during a shift change was overtime covered by Appendix “G” of the collective agreement for Ships’ Officers between the Treasury Board and the Canadian Merchant Service Guild (the Guild): Code 410/98.

[4] Mr. Giasson grieved in French and his grievance was denied at all levels of the grievance procedure. Mr. Giasson referred his grievance to adjudication and initially asked that his grievance be heard in French. On May 18, 2000, the Guild requested that the grievance be heard in Ottawa, in English, with simultaneous translation available.

[5] The Guild submitted as Exhibit G-1 a translation into English of the grievance and the replies from the employer. The Ships’ Officers collective agreement (Code: 410/98) was entered as Exhibit G-2.

[6] Mr. Giasson testified about his experience and training. He has been a first class engineer since 1985. Chief Engineer is a position on board ship that he occupies when sailing. Mr. Giasson has worked on vessels operating on the conventional system and on vessels operating on the lay-day system.

[7] As Chief Engineer, Mr. Giasson is the technical authority regarding machinery and systems on board ship. During his on-duty cycle, he is responsible for all technical aspects on board ship, all year round, even when the ship is docked or in dry-dock. Even during non-operational periods, there is always someone from the engine department on board. There are safety implications as the ship develops its own power used for all systems, including propulsion. The *Canada Shipping Act* applies to Coast Guard vessels. Mr. Giasson is accountable for a budget and the purchases of goods, services, tools and products needed to run a ship. He is the advisor to the Commanding Officer on safety questions or modifications to any systems or machinery. Prior to sailing, the Chief Engineer has the authority to keep

the ship alongside if there are safety issues or if the ship is not ready. When at sea, the Chief Engineer has a managerial function regarding the personnel in his department, but also has to deal with staff of other sections because of the co-ordination required in the operation of their equipment.

[8] It is necessary for the incoming Chief Engineer to meet with the outgoing Chief Engineer to obtain proper information from a colleague who is legally tied to the ship until officially signed off. Once signed in, the incoming Chief Engineer takes on all the responsibilities. This takes place on all vessels whether under the conventional or the lay-day system. Mr. Giasson explained that, under the conventional system, four hours are set aside for debriefing, sometimes a whole day. Under the conventional system, there is no difference in the pay between officers' briefing and debriefing. Mr. Giasson has worked under both the conventional and lay-day systems.

[9] Under the lay-day system, the crew change takes place at noon when the on-cycle starts with 12 hours of work per day for 28 days. It is the Chief Engineer on board who decides the time required for the briefing period.

[10] Mr. Giasson is classified at the SO-MAO-10 level and his pay rate is found in Appendix "A-3" of the relevant collective agreement: Code 410/98. His daily rate of pay is \$192.56 and his hourly rate is \$29.87. Under Appendix "H", Mr. Giasson receives lay-day credits pro-rated on the basis of the hours worked. Under the lay-day system, there is a 28 day on-cycle and a 28 day off-cycle.

[11] Mr. Giasson is often required to work during his off-cycle, usually to attend meetings or receive training. When this occurs, the "clock of lay-day deduction" stops and Mr. Giasson is credited for the time worked. This is still taking place since the grievance has been filed.

[12] On February 23, 1999, there was no special occurrence when Mr. Giasson reported for the briefing session at 10:30 a.m. From 10:30 a.m. to noon, he went through all the documents that are part of the briefing notes, approximately 50 pages, on all topics covered. Last year, the International Safety Measures (ISM) Code had just been implemented and they had to be more thorough than before.

[13] Mr. Giasson was not compensated for the time spent in briefing on February 23 and his lay-day bank was debited until noon. He did not earn any lay-day credit for the time he spent at work from 10:30 a.m. to noon.

[14] Mr. Giasson is always required to participate in briefing consultation on the occasion of the crew change. On February 23, 1999, the crew change was a typical crew change. When the crew change takes longer, the outgoing officer stays longer; he gets compensated and is still accumulating lay-day credits.

[15] There was no cross-examination of the grievor.

[16] Claude Langis was called as the employer's witness and he testified in French.

[17] Claude Langis has been a Superintendent of the marine sector since November 1998. He is responsible for staff assignment. From 1990 to 1998, Mr. Langis was a ships' Commanding Officer and from 1979 to 1990, he was a ships' officer.

[18] Mr. Langis describes his position as being the hierarchical or operational link between the Director, Operational Services and the Chief Engineers. He looks after personnel problems and human resources issues. Mr. Langis has never been a Chief Engineer. Mr. Langis submitted the generic position description for Chief Engineers (Exhibit E-1). This description applied to the position held by Mr. Giasson on February 23, 1999. At the time of the consolidation of staff, job descriptions were changed so that they no longer relate to specific positions but rather to all positions at the same level.

[19] Mr. Langis explained that the work period is 28 days on-cycle, starting at noon and is followed by 28 lay days (off-cycle). The normal schedule is from 6:00 a.m. to 7:30 p.m., with three meal periods. Exhibit E-1 applies to the ship *George R. Pearkes*, which operates on the lay-day system as described in Appendix H. The Chief Engineer on duty on the *George R. Pearkes* is covered by Appendix G of the collective agreement.

[20] Mr. Langis explained that, since the introduction of the lay-day system, there has been a management practice by which the ship's Commanding Officer, Chief Engineer, senior ships' officer and logistics officer are required to report to the vessel one hour before the scheduled crew change. This practice has been in place since at least 1992. Between 1992 and 1998, the officers were paid pursuant to the penalty

clause set out in Appendix H of the old collective agreement (Exhibit E-2), paragraph (d) at page H-5: Code 410/91. Officers were covered by the penalty clause and were paid triple time, that is, three hours pay for one hour worked, but they would lose one hour of lay-day credits.

[21] Since November or December 1998, no remuneration has been paid for the crew change hour. This hour is now covered by Appendix G, as a result of a directive issued on December 10, 1998 (see Exhibit E-3). Mr. Langis was initially "flabbergasted" by this new directive but, after doing some research, he learned that since the briefing hour is contiguous to the scheduled on-cycle, it is now covered by Appendix G.

[22] Exhibit E-2 is the extract from the old collective agreement, which contains the clause deleted in the new collective agreement. Under this clause, Chief Engineers were paid in a similar manner, regardless of whether they attended the briefing before or the debriefing after the start of the on-cycle.

[23] The officer who is completing his cycle at noon is in charge and the briefing can be extended. If there are major problems, such as a fire, explosion or leak, the Chief Engineer remains on duty until the situation returns to normal. This does not happen often, but it has occurred.

[24] Mr. Langis explained that management tries to schedule, several weeks in advance, meetings at which "everyone is expected to be present". Compensation is provided for the length of the meetings. For example, since December 1998, if a Chief Engineer on lay days is asked to attend an eight-hour meeting, he is credited 2/3 of a lay day and 1/3 of a lay day is deducted from his credits. Management does not consider the meetings that take place during lay days and the hour between 11:00 a.m. and noon for a crew change in the same way. The employer pays for the time spent at meetings "at which it wants to have people" and that it considers as being on a voluntary basis, unlike the hour of the crew change when attendance is mandatory. Management applies Appendix G of the collective agreement to the later situation.

[25] Since 1998, Mr. Langis has not received any requests for compensation from Chief Engineers or Commanding Officers who have stayed past noon.

[26] Mr. Langis explained that, under the conventional system, the Chief Engineer on board starts his normal workday at 8:00 a.m. and the incoming Chief Engineer also

comes on board at 8:00 a.m. Both are paid their base pay. The departing Chief Engineer goes on leave; he may work two, three or four hours; it varies. The time is not specified.

[27] Under cross-examination, Mr. Langis confirmed that the meeting during the crew change is required by the safety manual known by the initials "ISM" (International Safety Measures). The ISM code simply formalizes an existing practice. There is nothing unusual about the information meeting or debriefing; it is something that must occur at each shift change. There are some sixty changes per crew change and generally, the meeting lasts about one hour.

[28] The Chief Engineer coming on board arrives earlier when a Chief Engineer is not already familiar with the vessel because the exchange of information takes longer. The Chief Engineers discuss the time that will be needed for the information meeting and advise the assignment officer. There are two assignment officers on shore, one for the engine and logistics sector and the other for the deck sector, not including Commanding Officers. Mr. Langis is responsible for assigning Commanding Officers. As a general rule, the meeting between Commanding Officers lasts one hour.

[29] Mr. Langis has never had to deal with situations where the Chief Engineers' assignment officer has had problems because of requests for longer meetings between Chief Engineers. There may have been such requests; they have never presented problems, because they were legitimate.

[30] Mr. Langis worked as a Commanding Officer and does not believe that Chief Engineers exaggerate when they request more time for information meetings. Everyone leaves together; if the Chief Engineer takes longer, he delays the other three.

[31] Mr. Langis confirmed that, when officers are called back during their lay-days, they do not lose anything. They are credited with the hours spent in meetings and lay-days are added to the credits. For example, one eight-hour day is converted into  $\frac{2}{3}$  of a lay day. The lay-day credits are reduced by only  $\frac{1}{3}$  of a day and  $\frac{2}{3}$  of a day is added, which, in reality, makes  $\frac{4}{3}$  more lay-days. The officer is considered on-duty during the eight hours in question.

[32] In the past, under the penalty clause, paragraph (d) at page H-5 (Exhibit E-2), one hour of work gave entitlement to three hours pay, as one hour was deducted from the

lay-day bank. For example, when Mr. Langis was navigating, for a four-hour meeting during the off-cycle, eight hours were deducted from his lay-day credits and he received three times four hours of lay day credits in addition to the accumulated hours of pay. According to Mr. Langis, the current procedure is more lucrative for officers.

[33] Mr. Langis further explained that the penalty clause applied to all the parties involved in the crew change. Prior to the new directive, the time spent at all information meetings during the crew change was remunerated. Since the new directive, Appendix G applies. With the deletion of the old penalty clause, there is a gap in the collective agreement and managers have requested an interpretation. Appendix G, "Extra Duty Allowance", existed in the old agreement and had existed for several years. To Mr. Langis' knowledge, prior to November/December 1998, Appendix G had never been used to cover the crew change briefings.

[34] As a Commanding Officer, Mr. Langis authorized payments under the penalty clause. In 1995, when Appendix G was in effect, Mr. Langis authorized payments under the penalty clause for crew change briefings. Mr. Langis explained that Appendix G covers emergency call-back of officers during their on-duty cycle, who might sometimes work 20 hours although they were paid for 12 hours. Appendix G covers situations where officers are called outside their hours of work when they are off watch. The Chief Engineer is in charge at all times from the time he signs in on embarking until he signs off when departing. Only one Chief Engineer is in charge at a time.

[35] With respect to briefing, the compensation was always equivalent to one hour of pay. However, it could be increased under special circumstances.

[36] In view of the late hour, the hearing was adjourned and the parties were invited to submit written arguments.

#### For the Grievor

1. *This adjudication involves a grievance filed by Chief Engineer Réjean Giasson, a lay day officer, claiming straight time pay and the appropriate corresponding "lay day" credits for being required to report for work to conduct the crew shift change de-briefing with the departing Chief Engineer at 10:30 a.m. on February 23<sup>rd</sup>, 1999 - one and one-half hours earlier than the scheduled noon commencement time of his "on-duty cycle" (the "Crew Change Briefing").*

2. *Under Appendix "H" to the Collective Agreement, lay day officers are required to work a 28 day "on-duty" cycle, at 12 hours per day, followed by a 28 day "off-duty" cycle of lay days. While an officer earns 12 hours pay each day during the on-duty cycle, he only receives six hours' worth of pay each day during the on-duty cycle pay periods. The balance of his or her daily pay, along with a credit of one lay day, is banked and paid during the off-duty cycle so that the officer can maintain a regular rate of pay during both the on-duty and the off-duty cycle. For each lay day used during the off-cycle, the officer's lay day bank is debited the corresponding amount on a pro-rated basis so that an officer may generate or use fractional amounts of lay-days.*
3. *During the off-duty cycle, an officer is not required to perform any work for the employer unless compensated for that work in the usual manner. The evidence showed that both parties agreed that the "usual manner" means that when a lay day officer is required to work on his off-duty cycle is to first stop the clock on the deduction of lay day credits from the officer's bank for the period of time the officer is performing service for the employer. Secondly, the officer would then be paid by the employer the appropriate lay day hourly rate. Thirdly, the officer would be credited with the corresponding amount of lay-day credit for the time worked. It is interesting to note that the Employer's witness, Mr. Langis, indicated that he has a chart which he uses to pro-rate fractions of an hour worked for this purpose.*
4. *The Chief Engineer and other senior officers are required to conduct the Crew Change Briefing as part of their normal duties when there is a complete change of crew at the end of the 28 day cycle. The evidence showed there are significant responsibilities attached to the Chief Engineer's position for the safety and security of the ship and its crew both domestically and internationally under the ISM standards which have recently been implemented. Furthermore the Chief Engineer, like the Captain, or Chief Officer, is required to sign on at the beginning of their on-duty cycle, thereby assuming full legal responsibility for the vessel. Similarly, the departing officer is and must be fully responsible up until the point in time when he is "signed off" after the crew change de-briefing. As such, only one Chief Engineer can be legally responsible for the vessel at a time. Indeed, the Chief Engineer must give the Captain a "ready to sail" signal before the ship can leave port. In short, the Crew Change Briefing is an essential and mandatory legal requirement of the officer and the Employer and, as such, is "work" which must be compensated by the Employer.*
5. *On February 23<sup>rd</sup>, 1999 the grievor was completing his off-duty cycle and was scheduled to commence his on-duty cycle at noon. The employer debited his lay day bank until noon on that day.*
6. *In accordance with the usual requirements, the departing Chief Engineer requested that the grievor report to the vessel at 10:30 a.m. in order to conduct the Crew Change Briefing. In this case, there was nothing extraordinary to report; however, as the grievor testified, he has been required to either come in earlier than 10.30 a.m. on other occasions in order to be fully briefed on the running of the ship. He has also, on occasion, been compelled to stay later than noon when he was the departing Chief Engineer in order to ensure that all of the relevant information had been transferred to the on coming Chief Engineer. On*



February 23<sup>rd</sup>, 1999, the departing Chief Engineer left promptly at noon and, presumably, commenced his lay-day off-duty cycle at that time.

7. The Employer's witness, Mr. Langis, confirmed that he was unaware of any other situation where an officer would be required to attend work during his lay days and not be compensated in the usual manner as noted above in paragraph "3"
8. As stated at the outset, this grievance claims only straight time pay for the time worked on February 23<sup>rd</sup>, 1999 and the corresponding number of lay-day credits pro-rated to compensate the grievor for the time required to conduct the Crew Change Briefing.
9. The Employer relies upon the provisions of Appendix "G" in its response to this grievance. Appendix "G" applies to the grievor so as to provide an "extra duty allowance" to compensate the grievor and other senior officers referred to in Appendix "G" for unscheduled and required overtime which occurs during the 28 day on-duty cycle.
10. The Guild takes the position that Appendix "G" does not apply to the present grievance because this claim has nothing to do with overtime. The Guild only requests payment at straight time and the corresponding lay-day credits for work scheduled by the Employer during the off-cycle. As testified by both witnesses, in any other case when the Employer calls an officer to a meeting during the off-cycle, the officer is compensated for time worked at straight time, the debiting of his or her lay day bank is suspended and s/he is given the appropriate number of lay-day credits.
11. For example, from time to time the grievor is required to attend meetings during his off-cycle and he is always compensated at straight time rates and the corresponding number of lay-day credits. In fact, the grievor testified that he was scheduled to attend a meeting on Thursday June 22<sup>nd</sup>, 2000 at Regional offices to review the computer networking system used on the ship and there was no question between the Parties that this meeting time would be compensated in the usual manner (see paragraph 3).
12. The Guild takes the position that the grievor should receive the same compensation for the Crew Change Briefing and that the collective agreement requires, as a fundamental provision, that officers are paid at straight time (i.e., regular pay) for time worked during the off-cycle, unless a separate premium applies.
13. In the last round of bargaining, the Parties removed a penalty clause so as to not require a premium payment for work such as the Crew Change Briefing in most circumstances, but did not remove an officer's basic entitlement to receive her or his earned lay-day pay at straight time rates. The Guild believes that there has been some confusion among those responsible for administering the pay system under the new collective agreement so that somehow the straight time lay-day pay has been eliminated along with the premium payment in the penalty clause for work required during the Crew Change Briefing.

14. *More importantly, Mr. Langis also confirmed that this is the first time to his knowledge that any individual had been denied compensation for the Crew Change Briefing. Mr. Langis and the Employer generally relied on Exhibit "E-3", an internal Employer memo dated December 10<sup>th</sup>, 1998 (the "Memo"), which confirmed that Treasury Board had advised its administrators that the Crew Change Briefing was henceforth to be considered compensation under Appendix "G" and that no payment whatsoever should be made.*
15. *Mr. Langis testified that when he received the Memo he was "flabbergasted".*
16. *As a result of the Memo, an internal document, the Employer continued to debit Mr. Giasson's lay day bank credits up until noon on February 23<sup>rd</sup>, 1999 and, further, did not pay him any compensation whatsoever for attending the Crew Change Briefing from 10.30 a.m. to noon.*
17. *In short, the grievor was not compensated in any way for the hour and a half he was required by the Employer to be at work prior to the start of his scheduled lay-day period (sic). In fact, the grievor was penalized because the Employer continued to deduct lay day credits from his bank during the course of the Crew Change Briefing. In effect, the grievor "paid" his own salary out of his previously earned lay day credits for this work performed on behalf of the Employer.*
18. *Mr. Langis confirmed that he was unaware of any other situation where an officer, Chief Engineer or otherwise, would be required to attend work during their lay days and not be compensated in the usual manner (outlined above in paragraph 3).*
19. *The grievor testified that, under the earlier collective agreement and the new governing agreement, he has been required to attend meetings during his off cycle from time to time. For these meetings however, he was always compensated at straight time lay day rates, meaning he is paid the appropriate lay day rates for the hours involved in attending the meeting and a corresponding number of lay day credits is added to his lay day bank for the hours worked. In fact, as noted earlier, the grievor testified that he was scheduled to attend a meeting Thursday, June 22<sup>nd</sup> at Regional Offices to review the computer networking system used on the ship and there was no issue or debate between the parties at this meeting time which occurred during lay days would be compensated in the manner as just stated.*
20. *The Employer's witness, Mr. Langis, also agreed with Mr. Giasson's assessment of officer compensation under the lay day system and confirmed that this was one of the reasons why he used a chart with pro-rated hours and lay day credits; that is, Mr. Langis is required to make the appropriate adjustments to an officer's lay day banks when s/he is required to work during the off-cycle.*

#### Collective Agreement Arguments

21. *Under the previous collective agreement, there was a penalty clause in Appendix "H" which did require a premium payment for this type of debriefing work in addition to the usual lay day pay and credits. That clause read as follows:*

*Notwithstanding Article 30 Hours of work - Overtime Compensation- 4, when an Officer is required to report for work during a scheduled lay day period or remain beyond his scheduled work period, the Officer shall receive in addition to the Officer's earned lay-day pay, the equivalent of three (3) lay-days for each day worked during the scheduled lay-day period and a lay-day shall be deducted from the Officer's lay day bank.*

22. *In the last round of bargaining, the Parties removed this penalty clause so as to not attract a premium payment for this work; however, in no circumstances did the deletion of the penalty clause change or alter the collective agreement so as to preclude a lay day officer from earning the basic lay day credits for work performed during the off-cycle of their lay day time frame.*
23. *The Guild submits that it is a fundamental and trite principle that every employee is entitled to be paid for work performed for an employer; therefore, very specific, express and clear language is required to support the Employer's position in this case that the officers should not be paid for the Crew Change Briefing. Specifically, the Employer takes the view that the officer is to in effect "pay themselves" from their lay day bank for the Crew Change Briefing. For such an event to occur, the collective agreement language would have to be absolutely clear to show that the Parties intended such an unusual, extraordinary and frankly, unreasonable result.*
24. *The Employer also relies and suggests that, for the first time, Appendix "G" is to cover work performed by a Chief Officer or Chief Engineer during the Crew Change Briefing. The evidence is uncontradicted that prior to the amendments to the penalty clause, Appendix "G" existed in the collective agreement in basically the same format as in this collective agreement. At no time was it ever suggested that Appendix "G" ever precluded the chief officer or chief engineer from receiving premium payments under the old penalty clause. Indeed, from the Guild's perspective, Appendix "G" has no application whatsoever to receiving basic lay day compensation for work performed for the Employer during the off-cycle under the lay day system.*

#### Questions Raised by the Adjudicator

25. *At the conclusion of the hearing, the Adjudicator raised a number of questions which were to be dealt with in the written submissions. My notes indicate the following questions were raised:*
  1. *Where in Appendix "G" does it conclude that Article 30 does not apply?*
  2. *When would Article 30 arise under Appendix "H"?*
  3. *Why is the grievor not claiming overtime instead of regular lay day credits and compensation?*
  4. *How can the Employer deduct lay day credits when someone is at work on the vessel?*
  5. *On what basis is the grievor entitled to straight time pay?*

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Responses to Adjudicator's Questions

26. *This grievance claims normal lay day compensation for the grievor for the hour and a half worked on February 23<sup>rd</sup>, 1999 doing the Crew Change Briefing. As Madam Adjudicator noted, under the lay day system an employee is either on lay days during which time his or her compensation is paid from the lay day bank to the extent that there are credits available or, alternatively, s/he is working for the Employer and earning such lay day credits as well as lay day compensation as set out in the appropriate appendix.*
27. *This grievance claims lay day rates of compensation which are different conceptually than the normal "straight time" rates which would apply in a conventional system. Accordingly, the grievor is claiming normal lay day compensation both in terms of dollars and lay day credits on February 23<sup>rd</sup>, 1999 but is not claiming overtime payment.*

Re: Application of Article 30 and Overtime Generally

28. *In this instance, under Appendix "H" at page 104, lay days are defined as a day off work with pay to which an officer becomes entitled by working on the lay day system for a number of days.*
29. *Under Article 2(f), the "day" commences at the designated crew change time. In the instant case, the "day" commenced at twelve noon on February 23<sup>rd</sup>, 1999. Accordingly, the work performed by the grievor was performed during his lay day cycle which ought to attract the same compensation as would attendance at a meeting called in for the Employer's purposes. Conversely, "overtime" would require an officer to work in excess of his or her normal hourly requirements while "at work" (that is, during the on-cycle).*
30. *The fundamental argument advanced by the Guild takes (sic) with respect to this matter is that the Employer's work (the Crew Change Briefing) was performed during the last day of Mr. Giasson's off-cycle, per the definitions set out in the governing collective agreement, and that work is therefore entitled to attract the normal lay day compensation but is not "in excess" of any normally scheduled requirements for that day.*
31. *In short, to answer Madam Adjudicator's question No. 1, overtime or Article 30 would apply when an officer is required to work in excess of his or her normal scheduled hours while "on duty" (during the on-cycle).*

Re: Deduction of Lay Day Credits for Being at Work

32. *To state this question is to answer it. Frankly, the Guild finds the Employer's position in this situation offensive and irresponsible. There is no question that the Chief Engineers keep to a minimum the length of time they are required to conduct during their Crew Change Briefing. Furthermore, the entire Crew Change Briefing is set up so that the departing officer can return home to lay days at the earliest possible time, hopefully at noon. There are exceptional circumstances when the Crew Change Briefing continues beyond noon. The Guild submits that there is no suggestion on the evidence nor in the argument by the Employer that the hour and a half in this case, or the time taken in other similar*

cases, is not the time that is actually required to conduct this Crew Change Briefing. Accordingly the grievor should simply be compensated in the usual manner for performing such work.

33. During the course of the hearing, Madam Adjudicator also asked questions about the applicability of Appendix "G" generally. It is submitted that this question was clarified in the evidence of Mr. Langis when he confirmed that while on duty (during the on-cycle), a Chief Officer or Chief Engineer is required to answer all calls with respect to any emergency or outstanding issue outside their normal twelve hour shift by nature of their position and legal responsibility for the vessel itself.
34. As noted earlier, Appendix "G" has been in the collective agreement for many years and it has always applied in such circumstances and has never been applied to any Crew Change Briefings. Furthermore, Mr. Langis confirmed that as long as he had been a Chief Officer or involved with the Coast Guard, he had neither heard nor seen of a situation whereby Appendix "G" had applied prior to the time when the Chief Officer or Chief Engineer had "signed on" to the vessel (indicating the moment from which they were in command of the vessel, as discussed in paragraph 4 above). As the evidence also demonstrated, a Chief Engineer or Chief Officer can only sign off and sign on once the Crew Change Briefing has been completed and accordingly the time required to complete that Crew Change Briefing cannot, in any fashion, be considered to fall under Appendix "G" as suggested by the Employer's counsel or by Treasury Board in its memo dated December 10<sup>th</sup>, 1998.

### Remedy

35. Accordingly, the Guild requests the following in Order to remedy the issues raised in this grievance:
  1. A Declaration that the Employer has breached the collective agreement by not compensating the grievor for one and a half hours on February 23<sup>rd</sup>, 1999 when he was working on his off-duty cycle conducting the Crew Change Briefing.
  2. An Order requiring the Employer to compensate the grievor. Specifically, by returning to his lay day bank the one and a half hours lay day credit wrongfully taken from his bank on February 23<sup>rd</sup>, 1999, by providing him with a lay day credit (pro-rated for one and a half hours worked during his lay day off cycle on February 23<sup>rd</sup>, 1999 and straight time pay (i.e. regular pay) for one and a half hours. In short, the Guild requests that the one and a half hours be treated in the same fashion as any other time worked by a lay day officer doing their off duty cycle with appropriate compensation and lay day credit provided.

3. *An Order declaring that the collective agreement be administered in accordance with the above noted Declaration. Specifically, in the case of the grievor, that he be compensated for all Crew Change Briefings from the date of the grievance forward and, in the case of all other officers affected by this Adjudication and Declaration, an Order that they will henceforth be compensated in a like manner for all Crew Change Briefings.*

#### For the Employer

#### [Translation]

1. *On March 31, 1999, Mr. Giasson requested as corrective action that he be paid for the work period commonly called the "debriefing" held on February 23, 1999 from 10:30 a.m. to 12:00 p.m. (grievance signed by Mr. Giasson on March 31, 1999).*
2. *The debriefing consists of an exchange of information by which the "incoming" Chief Engineer finds out from the "outgoing" Chief Engineer the status of the vessel's engines.*
3. *More specifically, Mr. Giasson requested that "this work period be paid at straight time and that the accumulated lay-day credits for the period worked be added" (grievance signed by Mr. Giasson on March 31, 1999).*
4. *On January 27, 2000, the employer (3rd level) denied this request on the grounds "that as a Chief Engineer, you receive an extra duty allowance under Appendix G of your Ships' Officers' collective agreement" (reply from William J. S. Elliot dated January 27, 2000).*
5. *On February 25, 2000, Mr. Giasson and his union representative signed the "Referral to Adjudication" in which it is stated that Mr. Giasson is claiming this corrective action under **Appendix H** (Referral to Adjudication signed February 25, 2000).*

#### **QUESTION**

6. *We submit that the question to be addressed by the adjudicator is as follows:*

**Did the employee discharge the burden of proof whereby he had to show that the employer misinterpreted or violated the collective agreement by determining that the debriefing on February 23, 1999 should be considered as "extra duty", covered under Appendix G?**

#### **EVIDENCE**

7. *Mr. Giasson called only one witness: himself.*
8. *The employer also called only one witness: Claude Langis, Superintendent, Marine Operations, Laurentian Region.*

9. *The uncontradicted evidence is to the effect that on February 23, 1999:*

- *Mr. Giasson, as the "incoming" Chief Engineer (the one beginning his work day at noon), was required by the employer to report to work prior to the designated time for the crew change on the vessel Georges R. Pearkes for the debriefing.*
- *Mr. Giasson, as a Chief Engineer working on the Georges R. Pearkes, is covered by Appendix G, entitled "Extra Duty Allowance".*
- *Mr. Giasson, because he works on the Georges R. Pearkes, is also covered by Appendix H, entitled "Lay-Day Operational Crewing System".*
- *Mr. Giasson is a Chief Engineer SO-MAO-10.*

10. *The uncontradicted evidence is also to the effect that:*

- *The debriefing on the Georges R. Pearkes normally lasts one hour but can last longer in exceptional circumstances.*
- *The debriefing is necessary so that the "incoming" Chief Engineer can assure the incoming ship's Commanding Officer that the main and auxiliary engines are ready to get the Georges R. Pearkes under way.*
- *The work cycle for a Chief Engineer, such as Mr. Giasson, working on the Georges R. Pearkes (under Appendix H) is as follows: 28 days "on" and 28 days "off". The work schedule is from noon to noon.*
- *In the past, under the old collective agreement (filed as Exhibit E-2), the employer paid a penalty that covered the debriefing period.*
- *More specifically, the employer paid a penalty that was explicitly provided for under the old version of Appendix H that read as follows:*

(d) Notwithstanding Article 30 Hours of Work - Overtime Compensation - 4, when an officer is required to report for work during a normally scheduled lay-day period or remain at work beyond the officer's scheduled crew change date, the officer shall received in addition to the officer's earned lay-day pay, the cash equivalent of 3.00 lay-days for each day worked during the scheduled lay-day period and a lay-day will be deducted from the officer's lay-day bank.
- *The new collective agreement that took effect on September 17, 1998 amended Appendix H.*
- *In fact, this subsection of Appendix H containing the penalty clause does not appear in the Appendix H in force since September 17, 1998.*
- *As a result of that amendment, the employer stopped paying the penalty and regards the debriefing as extra duty paid under Appendix G.*

---

**ANALYSIS****(A) Appendix G**

11. *Paragraph 1 of Appendix G, "Extra Duty Allowance", states that a Chief Engineer SO-MAO-10, like Mr. Giasson (and working on the Georges R. Pearkes), receives an allowance for performing extra duties (\$11,001 as of April 1, 1998; \$11,221 as of April 1, 1999).*
12. *Paragraph 2 of Appendix G states that an officer is entitled to receive this extra duty allowance during those periods which he is serving on a vessel.*
13. *Paragraph 5 of Appendix G states that this allowance ". . . shall be considered as part of pay for purposes of the Public Service Superannuation Act (PSSA), Disability Insurance (DI), the Public Service Management Insurance Plan (PSMIP) and Severance Pay (Article 29).*
14. *Appendix G does not define the term "extra duty".*
15. *Since Appendix G does not explicitly define "fonctions supplémentaires" (extra duty), the common use of the word "supplémentaire", as given in the dictionary, should be used:*

*"Qui est en supplément" (Petit Robert, 1989) ([Translation] "additional")*
16. *As for the word "supplément", its common meaning is defined as:*

*"Ce qui est ajouté à une chose déjà complète" (Petit Robert, 1989)*

*([Translation] "something added; serving to increase")*
17. *Since in the instant case, the focus is on "duties", the position description constitutes the "something" being added to. In other words, the position description (filed as Exhibit E-1) constitutes the complete list of duties of a chief engineer SO-MAO-10.*
18. *The expression "extra duty" (fonctions supplémentaires) therefore means that it is a duty added on to those already provided for in the position description.*
19. *The position description (Exhibit E-1) lists the duties of a Chief Engineer SO-MAO-10.*
20. *It is the first paragraph of the position description (Exhibit E-1) that is relevant to this instance.*
21. *The beginning of the first paragraph reads as follows:*

*[Translation]*

*The incumbent oversees the operation of the engines in general, at sea and in port, during the vessel's operations so that it is always ready to carry out the missions assigned to it:*



By ensuring that the main and auxiliary engines are immediately ready to get under way on the Commanding Officer's order; (. . .)

22. *This part of the first paragraph therefore requires that the Chief Engineer ensure that the engines are ready at all times to get the ship under way.*
23. *The Chief Engineer referred to in this first paragraph is the Chief Engineer in charge of the vessel's engines at a given time.*
24. *On February 23, 1999, when Mr. Giasson participated in the debriefing as an incoming Chief Engineer, he was not the Chief Engineer in charge. He becomes that individual, however, at noon at the time of the crew change. It is therefore the departing Chief Engineer who is in charge during the debriefing.*
25. *Thus, during the debriefing on February 23, 1999, the duty described in the first paragraph did not apply to Mr. Giasson.*
26. *However, this duty created by the first paragraph necessarily involves the extra duty required of the incoming Chief Engineer, namely, the debriefing.*
27. *By requiring the Chief Engineer to ensure that "the engines . . . are immediately available to get under way at the commanding officer's order", it is necessary for the incoming Chief Engineer to have the debriefing before noon (that is, before the time designated for the crew change).*
28. *In other words, it is not until the debriefing is complete that the Chief Engineer will be able to assure his Commanding Officer that the engines are "immediately available".*
29. *The debriefing carried out by Mr. Giasson on February 23, 1999 as the incoming Chief Engineer is therefore an extra duty that arises from the duty mentioned in the first paragraph of the position description.*
30. *Therefore, this debriefing must be considered as extra duty that is, consequently, paid under the allowance established by Appendix G.*

**(B) Appendix H**

31. *Under Appendix H, all days in the full cycle (56 days) are considered as working days and a lay-day is not considered as a day of authorized leave with pay:*

**Lay-Days**

**General**

- (a) . . . all days will be considered as working days and there will be no days of rest.

**\*\***

- (b) . . . A lay day shall be considered a part of the work cycle and as such is not considered as a day of authorized leave with pay.

- 
32. Thus, under Appendix H, Mr. Giasson was not on authorized leave with pay during the February 23, 1999 debriefing. Moreover, it should be remembered that the employer pays Mr. Giasson for the debriefing. Mr. Giasson receives the extra duty allowance provided for in Appendix G for carrying out the debriefing, in particular.
33. There is nothing in Appendix H to indicate that the employer should have considered the debriefing as anything other than extra duty.

**(C) Burden of Proof**

34. **Mr. Giasson had the burden to prove** that by deciding that the February 23, 1999 debriefing should be considered as "extra duty" covered by Appendix G, the employer misinterpreted or violated the collective agreement.
35. However, there is nothing in the evidence presented or in the written arguments to show that the debriefing could not be considered as extra duty covered by Appendix G.
36. Indeed, no clause of the collective agreement was cited to try to show that the employer violated or misinterpreted the said collective agreement by considering the debriefing to be extra duty.
37. For this reason alone, we submit that the grievance should be dismissed.

**(D) Mr. Jewitt's written argument**

38. First, it seems that Mr. Jewitt is confusing "Chief Officer" with "Commanding Officer". Mr. Jewitt refers to "Chief Officer" in paragraphs 24, 33 and 34 of his argument when it should read "Commanding Officer".
39. Moreover, paragraphs 13, 22, 24 and 34 are quite surprising. At no time was any evidence presented to support the elements raised by Mr. Jewitt in these paragraphs.
40. Lastly, Mr. Jewitt's entire argument to try to explain that the debriefing cannot be considered as extra duty, and therefore, is not covered by Appendix G, appears to be based on the analogy that he makes between the debriefing and the meetings to which Mr. Giasson is called from time to time by the employer. Indeed, paragraphs 3, 7, 10 to 12, 18 to 20 and 29 refer to such meetings.
41. This grievance does not deal with the question of whether the employer was justified in treating such meetings differently than the debriefing. In this case, it is a question of whether the debriefing could be considered extra duty. The fact that the employer decided, on certain occasions, that such meetings would apparently not be treated as extra duty is not relevant to the case before us.
42. In any event, it is impossible to draw an analogy between the debriefing and such meetings because no evidence was presented to show the similarities between the two. Under the circumstances, any such analogy is clearly unsound and diverts us from the real issue in dispute.

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**CONCLUSION**

43. *The burden rested with Mr. Giasson to prove that the employer misinterpreted or violated the collective agreement and he did not succeed in discharging that burden. For that reason, we ask that the grievance be dismissed.*

**Rebuttal**

1. *Firstly, the Guild wishes to draw to the Adjudicator's attention that in its original submissions at paragraphs 24, 33 and 34, « Chief Officer » was referenced in error.*

*The position referenced in those paragraphs should have read exclusively as "Chief Engineer" not "Chief Officer". Mr. Giasson is a Chief Engineer and the references should have been made exclusively to that position.*

2. *In general, it is submitted that the Employer has not responded to the questions raised by the Adjudicator at the conclusion of the hearing (see paragraphs 25 and following of the Guild's original submissions). More importantly however, the Employer in its submissions, does not provide any justification to support the action taken by it in this case, namely to deduct lay day credits and to not compensate the grievor in any fashion whatsoever for work performed during the "off duty cycle".*
3. *At paragraphs 40 through to 42, the Employer wrongly suggests that the Guild's original submissions were invoking an "analogy" between other occasions when the Employer requires the Chief Engineer to work during the off duty cycle. In order to clarify the Guild's position, it should be noted that this was not an argument or "analogy" but rather, was the very evidence put forward by the Employer's own witness, Mr. Langis and that of Mr. Giasson. That evidence was that there exists no situation whatsoever wherein a Chief Engineer has been required to work during the off duty cycle and "pay" himself for this work by using up the appropriate lay day credits and not receiving appropriate lay day pay for the work involved and required by the Employer during the off duty cycle.*
4. *The Guild notes that the Employer does not dispute these matters of evidence asserted at the hearing by its own witness.*
5. *It is submitted that the Employer has also not addressed the clear logical inconsistency in its position regarding the applicability of Appendix "G" to this type of debriefing work performed during the off duty cycle. The evidence is clear and undisputed that Appendix "G" existed in numerous collective agreements. In fact, the Employer's own witness, Mr. Langis, confirmed that Appendix G had been in the collective agreement as long as he could remember. Prior to this grievance, the Employer has never sought to suggest that Appendix "G" applied in these circumstances as an "extra" duty.*
6. *As stated at paragraphs 12 and 13 of the Union's original submissions, the collective agreement requires, as a fundamental provision, that officers are paid regular pay for time worked during the off cycle (with a corresponding freezing*

of the lay day credit deduction and this corresponding crediting of a lay day credit for the amount of time worked). The removal of the penalty clause did not alter or remove an officer's basic entitlement to receive his or her earned lay day pay and credits for such work performed.

7. Under the lay day system, an officer is either on lay days during which time his or her compensation is paid from the lay day bank to the extent there are credits available or alternatively, he or she is working for the Employer and earning lay day credits as well as lay day compensation as set out in the appropriate appendix and in accordance with the applicable charts referred to by the Employer's witness to ensure proper crediting of lay day credits to the fractions of an hour.
8. In reply to the Employer's submission that these duties, carried out during the off duty cycle, are somehow covered as "extra" duties under Appendix "G", the Guild notes that this type of circular reasoning would create an absurdity wherein all work requested by the Employer during the off duty cycle - including the various other briefings and debriefings required by Chief Engineers dealing with computer issues, changes to the ship, etc. - would attract extra duty pay and the continued subtraction of earned lay day credits from the working officer's lay day bank. The Employer's proposal clearly flies in the face of the evidence given by the Employer's own witness who confirmed that there has never been any time in the entire history of the collective agreement, where off cycle work performed for the employer has been considered to fall under Appendix "G".
9. Finally, in this regard, the Guild submits that the evidence of the Employer's own witness was clear that Appendix "G", prior to the facts giving rise to this grievance, and as noted in the Guild's original submissions at paragraphs 33 and 34, confirmed that Appendix "G" was meant to compensate for extra duties required of a Chief Engineer outside their normal twelve hour shift **while on duty during the on duty cycle by reason of the nature and responsibility of the position itself**.
10. Furthermore, with respect to Mr. Blouin's submissions about the interpretation of the term "extra duties", it should be noted that the employer presented no evidence about the reasoning underpinning the December 1998 memorandum. Mr. Langis' testimony was confined to the fact that he asked for interpretive guidance from his superiors and he received it in the form of the memorandum. The employer chose not to call upon the memorandum's author to testify as to why the debriefing was suddenly given a new and completely different treatment under Appendix "G".
11. In any case, the term "extra duties" should be interpreted in the context of the entirety of the language of the collective agreement and the past practice of the parties with respect to their method of interpretation and application. As outlined in Mr. Giasson's testimony and in Mr. Langis' testimony, up until the filing of this grievance, the employer had never required officers to deduct lay day credits and in effect "pay themselves" for the privilege of working at the employer's request on their lay day.
12. In conclusion, the Guild resubmits its request that the Board issue the order referred to in paragraph 35 of its original submissions to resolve the issues raised

*in this grievance. To alter the clear, long standing and agreed practice with respect to the **non-applicability** of Appendix "G" in these circumstances, and to adopt the Employer's submissions that any and all work requested by the Employer outside the on duty cycle would no longer attract regular lay day compensation and credits would require absolutely clear and unequivocal language in the collective agreement, and no such language exists. It is only from the words and language used and how the parties have interpreted those words that the Board can determine the intention of the parties. In this case, there has been absolutely no dispute with respect to the non-applicability of Appendix "G" to the crew change debriefing performed during the off duty cycle and there is simply no ability to read into the collective agreement such a drastic and dramatic change as proposed by the Employer in this case.*

### Reasons for Decision

[37] The issue in this case is whether the hour and one-half spent in "debriefing" by Mr. Giasson on February 23, 1999 is covered by Appendix "G" or some other part of the Ships' Officers' collective agreement: Code: 410/98.

[38] The "George R. Pearkes" vessel operates under the lay-day operational crewing system. The "debriefing" took place just prior to the crew change when Mr. Giasson was to start his 28 days on-cycle at noon.

[39] Appendices "G" and "H" are in issue in the present case. Appendix "G" reads:

#### **EXTRA DUTY ALLOWANCE**

**\*\***

1. *An officer assigned as Master/Commanding Officer or Chief Engineer on "C" Class Vessels and above, or as Master/Commanding Officer or Chief Engineer on Department of National Defence Glen Class tugs and "S" Class Torpedo and Ship Ranging Vessels, shall be paid an extra duty allowance based on the sub-group and level prescribed in his/her certificate of appointment, as follows:*

<b><i>Sub-Group and Level</i></b>	<b><i>April 1, 1998 \$</i></b>	<b><i>April 1, 1999 \$</i></b>
<i>SO-MAO-12</i>	<i>13,205</i>	<i>13,469</i>
<i>SO-MAO-11</i>	<i>12,114</i>	<i>12,356</i>
<i>SO-MAO-10</i>	<i>11,001</i>	<i>11,221</i>

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SO-MAO-9	10,091	10,293
SO-MAO-8	9,376	9,564
SO-MAO-7	8,912	9,090
SO-MAO-6	8,585	8,757
SO-MAO-5	8,228	8,393

2. *The Employer may apply this Appendix to operations or vessels other than those listed in 1 above after consultation with the Guild.*
3. *This extra duty allowance will continue to be paid to an officer assigned ashore for training purposes, or to a shore-based position on an acting basis or otherwise for any period up to a maximum of one-hundred and twenty (120) calendar days. The officer will continue to receive the allowance only if the monthly basic pay for the position to which he/she is temporarily assigned would be less than the basic monthly pay plus the extra duty allowance in his/her substantive position.*
4. *An officer who is appointed to a position in a regional or relief pool is entitled to receive this extra duty allowance on the basis described in paragraph 1 during those periods which he/she is serving on a vessel.*
5. *The extra duty allowance shall be considered as part of pay for purposes of the Public Service Superannuation Act (PSSA), Disability Insurance (DI), the Public Service Management Insurance Plan (PSMIP) and Severance Pay (Article 29).*
6. *This allowance shall be paid on the same basis as the officer's pay.*

[40] Appendix "H" reads in part:

**LAY-DAY OPERATIONAL  
CREWING SYSTEM**

...

*Notwithstanding the provisions of the Ships' Officers Collective Agreement, the following conditions shall apply:*

## **Lay-Days**

### **General**

- (a) *Subject to operational requirements, the Employer will operate the selected vessels on a lay-day system. Under this system, all days will be considered as working days and there will be no days of rest.*

*\*\**

- (b) ***"Lay-day"** means a day off work with pay to which an officer becomes entitled by working on the Lay-Day Crewing System for a number of days. A lay-day shall be considered a part of the work cycle and as such is not considered as a day of authorized leave with pay.*

*\*\**

*Officers will be informed of the anticipated work schedule for the operational year. Officers will be notified of changes to the anticipated work schedule at the earliest possible time. Normally, officers will receive two (2) months notice of changes to the anticipated work schedule, with a minimum of fourteen (14) days notice.*

- (c) *The workday will consist on-duty-cycle of twelve (12) hours of work per day. For each day worked or for each on-duty-cycle day on which an officer is on authorized leave with pay other than compensatory leave and vacation leave with pay, an officer shall earn 1.00 lay-day in addition to the officer's Lay-Day pay.*
- (d) *An officer will be compensated at the applicable annual rate of pay as described in Appendix "A3", "B3" or "C3" of the Ships' Officers Collective Agreement. In order to maintain the officer's weekly rate of pay, the officer must either:*
- (i) *work,*
  - (ii) *be on lay-days, or*
  - (iii) *be on authorized leave with pay.*

*\*\**

*In the event that an officer does not work and is neither on lay-days nor on authorized leave with pay, his regular pay shall be deducted by an amount equal to his lay day rate of pay for each day's absence,*

*unless the officer has received an advance of lay-day credits.*

- (e) *It is recognized that lay-days are intended to be taken as time off work with pay. Normally, lay-days shall be paid in cash in cases of termination of employment or permanent appointment to a position which is not on a vessel operating on the lay-day system, or is not within the same department or region. However, at the request of the officer and with the concurrence of the Employer, lay-days may be converted into compensatory leave.*

*For the purpose of cashing in earned lay-days, a lay-day will equal the lay-day rate of pay multiplied by 1.5.*

*\*\**

- (f) *An officer shall not accumulate more than forty-five (45) days in their lay-day bank. In circumstances where an officer is required to work after accumulating forty-five (45) days the officer shall be paid, in addition to his/her regular pay and lay-day factor, the cash equivalent of 1.5 lay days for each day worked beyond the forty-five (45) day cap.*

*The premium payment may be waived after agreement between the Employer and the Guild.*

- (g) *For the purposes of overtime or any other hourly rated benefit the hourly rate shall be the appropriate rate found in Appendix "A-2".*

*...*

### **Administration**

- (a) *Lay-day credits shall be accumulated at the rate of pay for the sub-group and level at which they are earned.*
- (b) *Lay-day credits may be prorated on the basis of the hours in the normal work day.*

*\*\**

- (c) *Lay-days which have been displaced by training periods or vacation leave may be paid out at the direction of the Employer. The officer will have the option of converting these day (sic) to either cash or compensatory leave. When cash is chosen by the officer, lay-days displaced by training will be paid in cash at the officer's lay-day rate of pay multiplied by*



*1.5. Lay-days displaced by vacation leave will be paid in cash at the officer's lay-day rate of pay multiplied by 2.0.*

*\*\**

- (d) An officer who has reported for work without being notified not to report, and remains ashore waiting to board his or her vessel for crew change, shall be considered to be at work and is entitled to meals and quarters under Article 25.*

*\*\**

- (e) Where the Employer alters the scheduled "off-cycle" the Employer shall reimburse the officer's non-refundable portion of travel contracts or reservations made by the officer with respect to that period, subject to the presentation of such documentation as the Employer may require. The officer will make every reasonable attempt to mitigate any loss incurred and will provide proof of such action to the Employer.*
- (f) At the request of the officer and with the concurrence of the Employer, compensation earned in accordance with Article 21 - Designated Holidays, may be converted into compensatory leave.*

## **Article 2 - Interpretation and Definitions**

- (f) "Day" in relation to an officer means the twenty-four (24) hour period during which that officer is normally required to perform the duties of his/her position and commences at the designated crew change time.*

...

[41] Article 30 in Appendix "H" deals with "Hours of Work and Overtime" and reads:

## **Article 30 - Hours of Work and Overtime**

- (1) Overtime compensation will be subject to:*
- (a) clauses 30.07 and 30.08 of the Ships' Officers Collective Agreement, except that clause 30.07(c), 30.08(b) and (c) shall not apply; and*
- \*\**
- (b) an officer shall be entitled to compensation at time and one-half (1 1/2) for overtime worked in excess of his/her regularly scheduled hours*

*of work, except when an officer works more than eighteen (18) consecutive hours without six (6) consecutive hours of rest, he shall be paid at the double time rate (2T) for all hours in excess of eighteen (18) hours.*

*\*\**

- (c) an officer shall be entitled to compensation at time and one-half (1 1/2) for overtime worked in excess of his/her regularly scheduled hours of work. An officer shall be entitled to compensation at double time for overtime work of more than six (6) hours in excess of his/her regularly scheduled hours of work.*
- (2) An officer may leave the vessel after receiving permission from the Master/Commanding Officer.*
- (3) In the case of vessels assigned primarily to Search and Rescue operations, officers shall be available to return to the vessel within thirty (30) minutes. In the case of vessels whose primary function is not Search and Rescue, officers shall be available to return to the vessel within one (1) hour.*
- (4) All overtime earned and all compensation earned for performing security duty, shall accumulate as compensatory leave at the rate of pay at which it is earned. Such accumulated compensatory leave shall be held in reserve to be liquidated in leave or cash at the request of the officer and the discretion of the Employer.*
- (5) When an officer commences compensatory leave, such leave shall be granted at the sub-group and level at which it is earned and at the rate of pay for that sub-group in effect on the day on which the compensatory leave is granted. Compensatory leave will be liquidated in the order in which it is earned, commencing with the earliest accrued credits.*

[42] The following clauses refer to Appendix "G":

#### **TRAVELLING**

...

*\*\**

- 24.08** *Clause 24.04(b)(ii) does not apply to officers holding the position of Master/Commanding Officer, Dredge Master or Chief Engineer receiving Appendix "G".*

...

### **HOURS OF WORK AND OVERTIME**

...

**30.11** *Notwithstanding any other provisions of this Agreement, an officer who holds a position identified under Appendix "G" shall be compensated for overtime at the applicable overtime rate for overtime worked on a day of rest not exceeding his/her normal daily hours of work.*

### **CALL-BACK PAY**

...

**31.05** *This article does not apply:*

...

(d) *to officers holding a position identified in Appendix "G".*

...

### **REPORTING PAY**

...

**32.02** *This Article does not apply where an officer reports on board for sailing in accordance with the sailing time posted on the vessel's notice board or as otherwise required by the Master/Commanding Officer nor does it apply to officers holding the position of Master/Commanding Officer, Dredge Master or Chief Engineer, identified in Appendix "G".*

### **SECURITY DUTY**

...

**33.02** *This Article does not apply to an officer who holds a position identified in Appendix "G".*

[43] Appendix "G," on its face, is somewhat vague as to what it covers. The term "extra duty" is not defined. I do not accept the employer's definition of "extra duty" or "fonctions supplémentaires" as being a function not covered in the job description. A reading of the whole collective agreement clearly links Appendix "G" to questions of "overtime", "call-back", "reporting pay" and even "travelling time". When one reads the

articles where the parties have mentioned Appendix "G", it is clear that "extra duty" refers more to quantum of duty than to the nature of the duty.

[44] In fact when Mr. Giasson reported for his "briefing", on the "George R. Pearkes", on February 23, 1999, his on-cycle was de facto starting at 10:30 a.m. rather than at noon. Notwithstanding the grievor's work during this hour and one-half there can be no difference in the remuneration which he was entitled to receive for February 23<sup>rd</sup>, had he started at noon and worked an hour and a half later than usual. In fact on a crew change day, a Chief Engineer under appendix "H" is required to work extra time to cover the briefing period. This extra time is contiguous to his regular hours of work. It somewhat resembles the situations described in Articles 31 and 32.

[45] The evidence from the witnesses at the hearing supports this concept. Mr. Langis has explained that Chief Engineers, like Commanding Officers, are responsible 24 hours a day. Once on duty, officers covered by Appendix "G" might be called back to work during their "off watch" hours to deal with emergencies or problems. They may have to work 20 hours in one day for which they will be paid only for their regular 12-hour day.

[46] It is obvious that Appendix "G" is designed to cover overtime situations during regular days of work as well as call-back or reporting pay. What is not clear is how it applies to officers working under the lay-day system. Appendix "G" makes no reference to "Appendix H" and, likewise, Appendix "H" does not refer to Appendix "G".

[47] The parties both agreed that Appendix "G" did apply to Chief Engineers working under the lay-day system, that is, under Appendix "H". They disagreed on whether it applied to the "debriefing" period. In the past, the "debriefing" period was covered by a special penalty clause. This clause has been removed from the present collective agreement. How does this removal affect Appendix "H"? The removal of the penalty clause has left the overtime provisions to deal with extra work for officers under the lay-day system.

[48] As Appendix "G" is used to cover overtime compensation for Chief Engineers, it must be taken to cover the "briefing" and/or the "debriefing" period.

[49] The only problem I have is in the definition of "lay-day" and the following sentence under paragraph "e" on page 105 of Appendix "H":

*It is recognized that lay-days are intended to be taken as time off work with pay.*

[50] One cannot be on duty and on a lay-day at the same time. These are mutually exclusive concepts. The employer cannot deduct lay-day credits while an officer is at work unless there is specific language that provides for it, such as the old penalty clause did. There is no provision in the collective agreement that permits the deduction of lay-day credits for the period a Chief Engineer is on duty during the "briefing" or "debriefing" period although working outside the usual 12-hour on-duty period. Appendix "G" appears to cover the overtime pay this extra time spent at work entails. Mr. Giasson is therefore not entitled to any additional compensation for the hour and one-half which he spent on February 23, 1999 in the debriefing session.

[51] However, I am of the opinion that the employer cannot deduct lay-day credits during that time. The hour and one-half spent on February 23, 1999, in "debriefing" by Mr. Giasson was time worked; it was not an hour and one-half of lay-day. There was no evidence submitted to show that the time worked was not required or was unauthorized.

[52] Mr. Giasson's grievance is therefore allowed to the extent that he should be re-credited with the one and one-half hours of lay-day credits which the employer wrongly deducted for the debriefing session which he worked on February 23, 1999.

**Evelyne Henry,  
Deputy Chairperson**

OTTAWA, October 31, 2000.