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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

PIOTR PIOTROWSKI

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Before: Léo-Paul Guindon, Board Member

For the Grievor: Dan Rafferty, Professional Institute of the Public
Service of Canada

For the Employer: Greg Temelini, Counsel

Heard at Toronto, Ontario,
March 5 and 6, 2001.

DECISION

[1] The grievor, Dr. Piotr Piotrowski, has been the acting Veterinarian (VM) in charge of Maple Leaf Foods, Establishment 196, in Brampton, since July 1, 1999. Establishment 196 (Est. 196) slaughters and processes chickens for Canadian consumers and for export to the United States.

[2] The grievor requested the payment of overtime worked outside his normal workday hours as stipulated in clause B1.02 ("Non-Shift Work") of the collective agreement. More specifically, the grievor requested that he be paid overtime for the work performed between 4:15 a.m. and 6:00 a.m. each workday, from May 1, 2000.

[3] In the mid-1990s, Est. 196 implemented a change in its hours of operations; the new starting time was 5:30 a.m., Monday to Friday; this resulted in Dr. Piotrowski's start time changing from 6:00 a.m. to 5:30 a.m. to provide inspection services.

[4] During these years, Dr. Piotrowski would work daily, Monday to Friday, from 5:30 a.m. until 2:00 p.m., with a 30-minute unpaid meal break. Dr. Piotrowski was remunerated for 7½ hours at straight time and 0.5 hours overtime at time and one-half.

[5] Beginning in May 2000, Est. 196 altered its hours of operations; the "kill" began one hour earlier, at 4:30 a.m. Dr. Piotrowski was informed by his supervisor, Dr. Mary Rathlou, and Sue Lajeunesse, Human Resources, Canadian Food Inspection Agency (CFIA), that his hours of work were being changed accordingly, with a new start time of 4:30 a.m. and a finishing time of 12:30 p.m., including a 30-minute unpaid meal break. The new hours of work were confirmed in a memorandum dated August 25, 2000, addressed to all CFIA Inspection staff at Est. 196 by J. Crawford, Inspection Manager, Central Region (Exhibit G-2, Appendix II).

[6] The new hours of work, including the 30-minute unpaid meal break, constituted 7½ hours remunerated at straight time.

[7] In addition to the grievor, there are three other CFIA employees at Est. 196. All three of these employees come under the terms of a different collective agreement and are in a different bargaining unit than Dr. Piotrowski. Two of these employees work as Modernized Poultry Inspection Program (MPIP) inspectors. One of them begins work at 4:15 a.m.; the second starts at 4:00 a.m. (to inspect the chickens on the trucks); and the third employee begins work at 4:30 a.m. The two MPIP inspectors also work three

hours of overtime every second day on a rotating basis in order to monitor processing operations.

[8] The hours of operation of each department at Est. 196 effective May 1, 2000 are set out in a memorandum dated April 3, 2000, sent by the Plant Manager, Joe Pimentel, to Dr. Piotrowski and the MPIP inspectors and the operations for the "kill" department will start at 4:15 a.m. (Exhibit G-2, Appendix III).

[9] Dr. Piotrowski discussed the new schedule with his supervisor (J. Crawford) and the Program Manager (Dr. Fasel Beddih) and the parties came to the conclusion that Dr. Piotrowski had to be present for the inspection of the chickens at 4:15 a.m. before they were brought into the "kill" room to avoid contamination in the production line. Following that meeting, the employer agreed to pay overtime for the work performed between 4:15 a.m. and 4:30 a.m. as of May 1, 2000.

[10] Dr. Piotrowski wanted to be paid overtime for the work performed outside the 6:00 a.m. to 6:00 p.m. normal workday period of non-shift work. The parties agreed to submit to adjudication the question of his right to be compensated in overtime for the work performed between 4:15 a.m. and 6:00 a.m.

[11] The new Inspection Manager for Dr. Piotrowski assigned shortly after the grievance was filed (Dr. Mary Rathlou) stated that the change in the operational hours was decided by the Plant. The ante-mortem inspection is done by inspectors and, if a serious problem is discovered, a veterinarian is called to make a final decision. Dr. Rathlou was not consulted about the decision to pay the grievor at the overtime rate for the work performed by Dr. Piotrowski between 4:15 a.m. and 4:30 a.m. because she was not the Inspection Manager at the time of the decision; she did not agree to pay overtime for the time worked between 4:15 a.m. and 4:30 a.m. because in her opinion the presence of the veterinarian for the ante-mortem inspection is not required. The policy to be followed by veterinarians was filed as Exhibit G-4.

[12] The grievor comes within the terms of the collective agreement between the CFIA and the Professional Institute of the Public Service of Canada (PIPSC) regarding the Veterinary Medicine (VM) Group bargaining unit (Expiry: 2000/09/30) submitted as Exhibit G-1. The following articles of the collective agreement are deemed relevant:

ARTICLE A7 - INTERPRETATION AND DEFINITIONS

A7.01 For the purpose of this Agreement:

(...)

(l) "leave" means authorized absence from duty;

(...)

(r) "overtime" means work required by the Employer, to be performed by the employee in excess of the employee's daily hours of work.

(...)

ARTICLE B1 - HOURS OF WORK

This Article does not apply to VM Group employees on shift work, refer to Article B2, Shift Work.

(...)

B1.02 Non-Shift Work

Subject to Article B2, the normal work week shall be thirty-seven and one-half (37 ½) hours and the normal work day shall be seven and one-half (7 ½) consecutive hours, exclusive of a lunch period, between the hours of 6:00 a.m. and 6:00 p.m. The normal work week shall be Monday to Friday inclusive.

(...)

B1.04 Flexible Hours

Upon the request of an employee and the concurrence of the Employer, an employee may work flexible hours on a daily basis so long as the daily hours amount to seven and one-half (7 ½) hours.

(...)

ARTICLE B2 - SHIFT WORK

B2.01

(a) *When, because of operational requirement, hours of work are scheduled for employees on a rotating or irregular basis, they shall be scheduled so that employees work an average of seven and one-half (7 ½) hours per day and thirty-seven and one-half (37 ½) hours per week exclusive of meal breaks.*

(...)

- (c) *There will be no split shifts. The Employer shall not schedule more than two (2) shifts per day at the same worksite. Each shift may have two (2) separate starting times scheduled within a two (2) hour period.*

(...)

B2.02 *In this Article, “shift schedule” means the arrangement of shifts over a period of time not exceeding two (2) consecutive months and for a minimum period of twenty-eight (28) consecutive days.*

B2.03 *Every reasonable effort shall be made by the Employer to consider the wishes of the employees concerned in the arrangements of shifts within a shift schedule. In order to help in the consideration of the wishes of the employees concerned, a provisional shift schedule shall be prepared by the Employer and shall be posted at least one (1) month in advance.*

(...)

B2.06 *Provisional and final shift schedules shall indicate the working hours for each shift. The final shift schedule shall be published at least one (1) week prior to the commencement of the said shift.*

(...)

ARTICLE B3 - OVERTIME

B3.01 *When an employee is required by the Employer to work overtime the employee shall be compensated as follows:*

- (a) *on the employee’s normal work day, at the rate of time and one-half (1 ½) for each hour of overtime worked;*

(...)

B3.02 Calculation of Overtime

All calculations of overtime shall be based on each completed period of fifteen (15) minutes.

(...)

Arguments

[13] The grievor's representative submitted that the workers perform day work and are not shift workers. Clause B1.02 ("Non-Shift Work") applies to the workers who do not perform work on a rotating or irregular basis (shift work). Consequently, Article B3 applies and the employee should be compensated for the overtime worked outside the daily hours of work which are, as stated in clauses B1.02, between 6:00 a.m. and 6:00 p.m. The overtime was required by the employer and the employee has to perform his duties from 4:15 a.m. to 6:00 a.m. every day.

[14] In *Lachance* (Board files 166-2-14167 and 14168), Deputy Chairman G. D'Avignon came to the conclusion that the type of schedule followed by the grievors does not have the aspects of working on a rotating basis. In *Lachance*, the work schedule of the employee did not show a fluctuation in hours; the days of rest are consecutive, and always on Saturday and Sunday, and the normal work day shall be 7½ consecutive hours, exclusive of a lunch period, between the hours of 6:00 a.m. and 6:00 p.m. The same aspects of the work schedule appear in the present case and the decision of the adjudicator in *Lachance* applies here. The grievor, Dr. Piotrowski, has to be considered as a non-shift worker and clauses B1.02 and B1.03 apply to his situation.

[15] The decision rendered in *Canadian Union of Public Employees and National Film Board* (Board files 169-8-417 and 418) establishes that the employer can impose on its employees a work schedule that requires them to work "overtime" regularly. In the present case, Dr. Piotrowski worked outside his normal hours of work and he has to be paid overtime. The *Justinen* decision (Board files 166-2-15440 and 15441) states that the time worked in excess or outside of scheduled hours has to be compensated and this principle must be applied in the present case. Consequently, Dr. Piotrowski has to be compensated at the overtime rate for the work performed between 4:15 a.m. and 6:00 a.m. on each workday.

[16] According to the employer's counsel, the work performed by Dr. Piotrowski is done on a rotating or irregular basis. In *Savard and Zirpdji* (Board files 166-2-1768 and 1769), any work which did not come under the definition of day work under clause 25.02 (Non-Shift Work under clause B1.02 in the present case) was shift work under clause 25.06 (clause B2.01 in the present case) and would come within the meaning of

the words “on a rotating or irregular basis” in accordance with the intention of the parties at the time they signed the collective agreement. In the present case, the new schedule imposed on Dr. Piotrowski in May 2000 has a start time of 4:30 a.m. and a finishing time of 12:30 p.m., including a 30-minute unpaid meal break. This new schedule does not come under the definition of “Non-Shift Work” following clause B1.02 of the collective agreement, which provides that the normal work day of non-shift work shall be consecutive hours between the hours of 6:00 a.m. and 6:00 p.m. Consequently, Dr. Piotrowski’s new schedule has to be considered as a shift-work schedule under Article B2 of the collective agreement. The principle set out in *Savard and Zirpdji (supra)* applies to the present case. The principle established in *Savard and Zirpdji* was endorsed by the Public Service Staff Relations Board (Board file 168-2-98) and followed by the adjudicator in *Freitag and others* (Board files 166-2-8086 to 8090).

[17] The employee has to perform over 7½ hours of work per day to be entitled to overtime.

[18] The principle set out in the *Lachance (supra)* decision does not apply to the present case because the facts are different. The grievor performed his work inside the normal workday between 6:00 a.m. and 6:00 p.m. in *Lachance* and Dr. Piotrowski performed his work outside the normal workday, from 4:30 a.m. to 12:30 p.m.

[19] For the employer’s counsel, the overtime provision of the collective agreement (subclause A7.01(r)) provided that overtime is work performed “in excess of the employee’s daily hours of work”. This means more than 7½ hours per day as stated in clause B2.01 for the shift work. As the employee does not work more than 7½ hours per day, he is not entitled to be paid overtime.

Reasons for Decision

[20] Beginning in May 2000, Dr. Piotrowski was informed that his daily hours of work were being changed with a new start time of 4:30 a.m. and a finishing time of 12:30 p.m., including a 30-minute unpaid meal break. The new hours of work constituted 7½ hours remunerated at straight time.

[21] The employer agreed with Dr. Piotrowski that his presence is necessary at Est. 196 at 4:15 a.m. at the time for the inspection of the chickens before they are brought into the “kill” room; this proceeding will avoid an eventual stop of the

production line because of contamination. In his uncontradicted testimony, Dr. Piotrowski stated that his presence at Est. 196 15 minutes prior to his schedule was required by his employer.

[22] The testimony of Dr. Rathlou, in which she declared that she disagrees with the decision to require the presence of Dr. Piotrowski at work for 4:15 a.m., did not change the fact that a decision was made in this regard by management in charge (J. Crawford, Supervisor, and Dr. Beddihi, Program Manager) in May 2000.

[23] I come to the conclusion that the new schedule for Dr. Piotrowski, starting in May 2000, has to be considered as shift work following Article B2 of the collective agreement. The wording of the “Non-Shift Work” clause (B1.02) states that the normal work day shall be between the hours of 6:00 a.m. and 6:00 p.m. and cannot include a schedule outside this time frame. The new schedule of Dr. Piotrowski has a start time of 4:30 a.m. and a finishing time of 12:30 p.m. and is outside the 6:00 a.m. and 6:00 p.m. timeframe for non-shift work as defined in clause B1.02. A work schedule which does not come under the definition of “Non-Shift Work” under clause B1.02 is, in my view, shift work under Article B2 of the collective agreement.

[24] Subclause B2.01(a) recognizes that management has the right to modify hours of work and to change them from a non-shift work to a shift work basis because of operational requirement. The new hours of operation of the Establishment created a new operational requirement for a schedule located outside the timeframe of the “Non-Shift Work” normal workday. In imposing the schedule from 4:30 a.m. to 12:30 p.m. on Dr. Piotrowski, management transferred him to a “Shift Work” schedule following Article B2 of the collective agreement.

[25] In a similar situation, adjudicator Perry Meyer came to the following conclusion in *Savard and Zirpdji (supra)*:

...

...Any work which does not come under the definition of day work under clause 25.02 is in my view shift work under clause 25.06 and would come within the meaning of the words “on a rotating or irregular basis” in accordance with what I deem to be the intention of the parties at the time they signed the agreement, having regard to all the provisions thereof....

[26] This decision was endorsed by the Public Service Staff Relations Board on an application by the grievors to the Board under section 23 of the *Public Service Staff Relations Act*, as it then was, which permitted the reference of the decision of an adjudicator to the Board on a question of law or jurisdiction (Board file 168-2-98). In *Freitag (supra)*, adjudicator Kenneth E. Norman stated that the sweeping proposition upon which the decision in *Savard* and *Zirpdji (supra)* rests, admits of no exception. I share his opinion and, as expressed in paragraphs 22 and 23, the grievor was performing shift work after May 2000.

[27] Dr. Piotrowski performed his work from 4:15 a.m. instead of 4:30 a.m. as provided in his new schedule. His uncontradicted testimony showed that he performed his duties 15 minutes over his average of 7½ hours of work per day. Consequently, he is entitled to receive compensation at the rate of time and one-half for each period of 15 minutes that he worked in excess of 7½ hours every working day since May 2000, according to subclause B3.01(a) and clause B3.02 of the collective agreement.

[28] Dr. Piotrowski's grievance insofar as it requests that he be paid overtime for the work performed outside his normal work day hours, that is, between 6:00 a.m. and 6:00 p.m., as non-shift work is denied.

[29] The grievance is allowed in part, the employer having admitted in its responses at each level of the grievance process that the grievor has to be considered as a shift worker. Consequently, the grievor should receive compensation for the 15 minutes overtime that he performed every day prior to his scheduled hours of work, at the rate of time and one-half. I will retain jurisdiction to assist the parties in calculating the amount of compensation, if that becomes necessary.

**Léo-Paul Guindon,
Board Member**

OTTAWA, September 14, 2001.