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Public Service Staff  
Relations Act

Before the Public Service  
Staff Relations Board

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BETWEEN

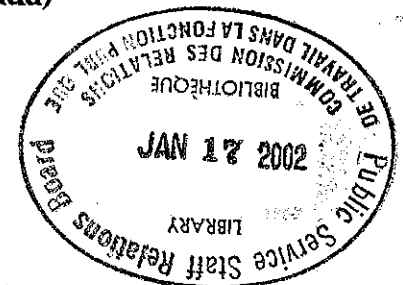
YVON CARDINAL  
BERNARD LECLERC

Grievors

and

THE TREASURY BOARD  
(Public Works and Government Services Canada)

Employer



**Before:** Jean-Pierre Tessier, Board Member

**For the Grievors:** Rachel Dugas, Public Service Alliance of Canada

**For the Employer:** Karl G. Chemsî, Counsel

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Heard at Montreal, Quebec,  
November 15, 2001

## DECISION

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[1] The grievors are governed by the collective agreement signed between the Treasury Board and the Public Service Alliance of Canada for the Operational Services Group.

[2] On April 14, 2000 in the case of Yvon Cardinal and April 25 in the case of Bernard Leclerc, the two grievors filed a grievance seeking compensation for standby duty, pursuant to article 31 of the collective agreement.

[3] They argued that the employer failed to follow up on their July 29, 1999 request to be added to the list of employees designated for standby duty in the event of an emergency.

[4] At the November 15, 2001 hearing into these two grievances, the parties agreed to provide joint evidence for both grievances.

[5] The employer raised a preliminary objection concerning the admissibility of the grievances given their timeliness. According to the employer, the grievors had been aware of the responsible manager's position as early as September 17, 1999, when the manager explained to them why they would not be given standby duties. However, the grievances were not filed until April 2000, more than twenty-five (25) days after this event (letter of September 17).

[6] On this point, the grievors replied that this event was of an ongoing nature and that they could provide evidence about the circumstances that would explain the delay in filing the grievances.

[7] This objection was taken under advisement and the parties presented their evidence.

### Evidence presented by the Grievors

[8] I believe that the testimonies would be easier to understand if the work environment was first described. Given the tenants (departments) in the Peel St. building where the grievors work, the air conditioning, heating and electrical systems have to be maintained in good working order 24 hours a day, seven days a week. One of the other things that should be pointed out is that the building houses a data processing centre and an employment insurance cheque distribution centre as well as a Canadian Security Intelligence Service office.

[9] The first witness for the grievors was Yvon Cardinal. His position was classified as a Machinery Maintenance Craftsman at the GL-MAM-08 group, subgroup and level, and his supervisor was Yvon Rajotte whose position was classified at the GL-MAM-13 group, subgroup and level, until August 2001, and later Robert Emond.

[10] The grievors explained that in the building, the working group consisted of the following individuals, in addition to the supervisor, Yvon Rajotte:

- 2 electricians: René Duluth and Pierre Beaudoin
- 2 refrigeration mechanics: Robert Emond and Bernard Roy
- 2 mechanics: Yvon Cardinal and Bernard Leclerc
- 1 inspector: Michel Chevrier
- 1 welder: Jean-Roch Poirier

[11] The normal work schedule is from 7:00 a.m. to 3:00 p.m. Therefore, in addition to weekends, standby duty extends from 4:00 p.m. to midnight and from midnight to 8:00 a.m. If a problem occurs in the building outside of the normal work schedule, a security guard contacts the designated employees to report for standby duty.

[12] Mr. Cardinal indicated that his work required him to do preventive maintenance and repair the equipment at the site. Given the special nature of the building, some repairs can only be done on weekends, when there is less activity, which means that Mr. Cardinal has to work one weekend a month, on average.

[13] Mr. Cardinal explained that when he was in the building on weekends, the security guard would occasionally alert him to operating problems with some of the equipment. It should be understood that the building has a main computer for control linked to the various mechanical components (air conditioning, heating, electrical system). When it detects a problem, the computer prints out the location and type of failure. In addition, the computer classifies the seriousness of the problem into one of three categories. Type A problems require immediate intervention, type B problems require partial intervention and type C problems can wait until later.

[14] According to the witness, the computer can be by-passed and placed in manual mode. Many problems can be resolved on the basis of a visual examination of the part, which may, for instance, reveal a defective belt in a piece of equipment.

[15] The witness explained that in 1999, during the strike, he had been designated for standby duty, just like some of his other colleagues (four out of ten people), as was the case during the Y2K transition. Following a grievance concerning standby designation during the 1999 strike, the employer agreed to compensate Mr. Cardinal for the periods when he was on standby (Exhibits F-2 to F-5).

[16] During this time, Mr. Cardinal requested (Exhibit F-6) that standby compensation be paid to all employees wishing to be included in the standby duty list. On September 17, 1999, the employer replied (Exhibit E-1) that employees required specific knowledge to use the computer and knowledge of the building's equipment; in addition, any employee designated for standby duty was required to have the financial authority (by delegation) to requisition contract services, if necessary. According to the employer, only one individual had been designated for standby duty during that period, this being Mr. Rajotte.

[17] After talking to other colleagues, Mr. Cardinal realized that another employee, Mr. Chevrier, had received compensation for standby duty when he replaced Mr. Rajotte when the latter was absent (holidays, sickness, etc.). Based on this information, Mr. Cardinal met with his superiors to request the designation of other employees for standby duty.

[18] In subsequent discussions, Jean Boissonneault confirmed that he would arrange for training for those employees wishing to be designated for standby duty. Mr. Cardinal brought the matter up again on March 1, 2000 (Exhibit F-8), enquiring when the employees would be starting training. The subsequent September 22, 2000 memorandum from the employer (Exhibit F-7) confirmed that training sessions would take place. Finally, the list of employees designated for standby duty became effective on November 13, 2000 (Exhibit F-9). The grievors' names were on that list.

[19] In closing, Mr. Cardinal pointed out that the training sessions were slow to be set up and that, in fact, he and his colleagues learned very little at these sessions. In terms of the main computer, the employees only received a 15-minute training session,

and even as recently as November 2001, Mr. Cardinal still did not have an access code for the computer.

[20] In view of this situation, Mr. Cardinal explained that he had initially trusted the employer but later, seeing that things were not moving along, he filed his grievance on April 7, 2000 in order to get management to act. Mr. Cardinal indicated that even though the list of employees designated for standby duty became effective on November 13, 2000 (Exhibit F-9), the employer had agreed to compensate the employees whose names appeared on the list, other than Mr. Rajotte and Mr. Chevrier, for one week of standby duty, as though the list had been in effect at the end of September 2000.

[21] In cross-examination, Mr. Cardinal confirmed that he had no computer knowledge. However, he indicated that two other employees (electricians) had been given standby duties for several years, these being Mr. Duluth and Mr. Beaudoin.

[22] The second witness, Bernard Leclerc, confirmed the main points of Mr. Cardinal's testimony. However, he expanded on the content of the training sessions set up by the employer. According to him, these were more in the nature of information than training sessions. The employees discussed the main problems that could arise and received information about the location of equipment throughout the building. Mr. Leclerc then referred to the minutes of the meetings, which were prepared by Mr. Andreas and submitted on December 1, 2000 (Exhibit F-12).

[23] Mr. Leclerc concluded by pointing out that the training sessions were still under way, and he referred to the memorandum and course outline for a session in September 2001 (Exhibits F-13 and F-14).

[24] The third witness, Mr. Duluth, was an electrician in the same Peel St. building. He indicated that during information sessions in October 2000, he had instructed his colleagues on the use of the pagers. Mr. Duluth explained that, in addition to Mr. Rajotte, the two electricians had, for several years, been alternately designated for standby duty to respond to emergency calls.

#### Evidence presented by the Employer

[25] Mr. Délisle appeared on behalf of the employer. He was the manager responsible for the Peel St. building from 1984 to 1998. He confirmed the fact that the Peel St.

building housed some "special" tenants and that the equipment they required for their work operated around the clock. As a consequence, his unit purchased a main computer for \$500,000 in 1984-1985. The purchase contract included 400 hours of training, which were given to Mr. Rajotte (Supervisor) and Mr. Chevrier (Day Inspector and Operator).

[26] Mr. Délisle explained that his decision to designate a single individual for standby duty, Mr. Rajotte, had been based on the fact that the latter had a good knowledge of the tenants' requirements and the location of the equipment and that he had received computer training. According to the witness, Mr. Rajotte was better at decoding the main computer's messages. When Mr. Rajotte was absent, he was replaced by Mr. Chevrier, who had also received training on the computer's features.

[27] However, in cross-examination, the witness expanded on the fact that two electricians had also been designated for standby duty (alternately). According to Mr. Délisle, this was a specialized field and the building could not allow a major electrical failure. Essentially, according to the witness, the electrician designated for standby duty looked after the problems connected with this particular field and Mr. Rajotte looked after the rest.

### Arguments

[28] On the matter of timeliness, the representative of the grievors indicated that following Mr. Cardinal's July 1999 request (Exhibit F-6) and the employer's September 1999 reply, the employer, notwithstanding the reason given for his refusal, in October 1999 offered to proceed differently in the future and agreed to provide training so that the other employees could be designated for standby duty.

[29] According to the representative of the grievors, it was because management was so slow in setting up the training sessions that Mr. Cardinal decided to file a grievance in April 2000.

[30] The evidence presented by the grievors suggests that they had enough knowledge to be designated for standby duty.

[31] According to the representative of the grievors, article 31 should be interpreted to mean that, as soon as there is a requirement for standby, standby duties must be

equitably distributed among employees who wish to be designated for standby duty. Previous decisions by the Board would confirm this interpretation.

[32] According to the representative of the employer, the September 17, 1999 letter (Exhibit E-1) provided the employer's reply. If the grievors wished to challenge it, they should have grieved within 25 days following that response.

[33] As for the merits of the dispute, according to the representative of the employer, the choice of individuals designated for standby duty rests solely with management. Accordingly, the employer's decision to limit standby duty to Mr. Rajotte was reasonable and non-arbitrary. The representative of the employer referred to *Angers* (Board files 166-2-21622 to 624 and 166-2-21751 and 752), in which the adjudicator concluded that it was up to the employer to designate individuals for standby duty.

#### Reasons for Decision

[34] The evidence presented shows that the cause of action is of an ongoing nature in the sense that the request for standby duty is updated on a weekly basis, which means that an employee may complain at any time about not having been included in the standby duty list.

[35] However, the employer's objection deals more specifically with the fact that several months had elapsed between the request by the grievors (Exhibit F-6) and the employer's reply (Exhibit E-1) and the filing of the grievances in April 2000. Clause 18.10 of the agreement states:

*18.10 An employee may present a grievance to the First Level of the procedure in the manner prescribed in clause 18.05 not later than the twenty-fifth (25<sup>th</sup>) day after the date on which he or she is notified orally or in writing or on which he or she first becomes aware of the action or circumstances giving rise to the grievance.*

[36] Thus, the cause of action has to be determined in this case; the cause of action is not the employer's explicit refusal (Exhibit E-1) to include the names of Mr. Cardinal and Mr. Leclerc in the list of employees designated for standby duty, but rather its failure to put the grievors' names on the list over the months. This list is maintained in effect over the weeks. I would add that the employer's reply to Mr. Cardinal's request

looked more like a justification of its decision that was then in force than a firm refusal for the future.

[37] Nevertheless, the evidence indicates that the employer later reconsidered and that the representative of the employer, Mr. Boissonneault, indicated to Mr. Cardinal that he was planning to provide training to those employees who were interested in assuming standby duties.

[38] This was why, on March 1, 2000 (Exhibit F-8), Mr. Cardinal wrote to Mr. Bordeleau and Mr. Boissonneault to ascertain the date when the employees would be entitled to their compensation for standby duty. In this letter, Mr. Cardinal indicated as a reminder that he had discussed this matter with Mr. Boissonneault on October 13, 1999 and at a meeting on January 14, 2000. The employer's September 22, 2000 reply (Exhibit F-7) was unequivocal and confirmed the implementation of a training plan designed to distribute the standby duties among several employees. All of these factors justified the filing of the grievances in April 2000 in an attempt to speed things up.

[39] In order to rule on the merits of the dispute, it is first necessary to specify the meaning of clause 31.02 in the collective agreement and then to review the case law submitted by the parties in connection with the application of article 31. Finally, I shall define the scope of the grievance in light of the evidence submitted.

[40] In my opinion, the wording of clauses 31.01 and 31.02 of the collective agreement is clear, and these clauses are interconnected:

*31.01 Where an Employer requires an employee to be available on standby during off-duty hours, such employee shall be compensated at the rate of one-half (1/2) hour for each four (4)-hour period or part thereof for which the employee has been designated as being on standby duty.*

*31.02 (a) An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return for duty as quickly as possible, if called.*

*(b) In designating employees for standby, the Employer will endeavour to provide for the equitable distribution of standby duties.*



...

[41] The text is succinct. There is no mention of qualifications or seniority. Clause 31.01 of the collective agreement only addresses the consequences of a designation once the employer requires an employee to be available for standby duty. The same applies to clause 31.02, which addresses the consequences arising from the fact that the employer designates employees for standby. The employer must then provide for the equitable distribution of standby duties.

[42] As previously indicated, the employer's letter (Exhibit E-1) was more a justification of its previous position, whereby it designated a single employee for standby duties. However, the evidence has revealed that, for security reasons, the employer had also designated two electricians for standby duty. It is up to the employer to designate one or more employees for standby duty and, in my opinion, the employer's decision was neither unreasonable nor discriminatory. It stands to reason that the team of Mr. Boissonneault, occasionally relieved by Mr. Chevrier and the electricians, was effective in responding to emergencies. The electrical system is important in the Peel St. building and Mr. Boissonneault had good knowledge of the building and the computer operations.

[43] However, the previously stated factors are insufficient for ruling on the grievance in all fairness. Although I cannot accept the argument presented by the grievors to the effect that, as soon as there is a requirement for standby availability, the employer is required to designate and even train all employees wishing to be given standby duties, it would follow from the decisions provided by the representative of the grievors that the employer must explain and prove that it acted in a reasonable and non-arbitrary manner.

[44] In this sense, *Helmer* (Board file 166-2-25427) specifies that once the employer decides to give a group of employees an opportunity to take on standby duties, it cannot exclude one employee for trivial reasons. In *Helmer (supra)* the employer required that the employee on standby duty be able to return to work within 30 minutes of being called. It should be noted that the employee had 15 minutes to indicate that he had received the call, which added up to 45 minutes. In this case, the employee demonstrated that he had a cell phone and could be at work within 50 minutes after receiving a call, thereby proving that the employer's decision to exclude him was unreasonable.

[45] In *Chester Macadams* (Board file 166-2-26601), the employer had designated several employees for standby duty. He later struck all but the military employees from the list. The adjudicator concluded that the employer could not justify the fact that it had reverted to its initial decision because the collective agreement applied to all employees covered by the agreement.

[46] In the end, the above-cited decisions do not in any way contradict *Angers (supra)*. Article 31 of the collective agreement leaves it up to the employer to designate one or more employees for standby duty. However, once the employer has expressed its wish, the adjudicator can review whether it acted in a reasonable and non-arbitrary manner in setting up the team of employees who could be available for standby duty. Thus, once the employer determines that all of the mechanics in the workshop can be given such duties, it must justify its position when it decides to exclude one of them.

[47] In this case, the evidence indicates that following the request made by Messrs. Cardinal and Leclerc in July 1999 (Exhibit F-6) and the manager's reply (Exhibit E-1), the employer decided to give standby duties to those employees who had volunteered, on condition that they had received the necessary training.

[48] It is true that under article 31 of the collective agreement, it is up to the employer to designate those employees who can be on standby, but in all reasonableness, once it has decided to include several employees the employer cannot ignore its obligation to provide for the equitable distribution of standby duties and restrict, in practice, the designation to the one or more employees that it had previously designated.

[49] Given that Messrs. Rajotte and Chevrier know how to operate the main computer, other employees may team up with them to perform the standby duties. This, in fact, is what the employer did over several years when it assigned standby duties to two electricians in addition to Mr. Rajotte, who knew how to operate the main computer.

[50] From the moment the employer decided to add other employees to this team, the evidence shows that the timeframes for training, not to mention information, could have been shorter than they were. Enabling the employer to extend the timeframes would be equivalent to giving it permission to renege on its obligation to provide for

an equitable distribution of standby duties among the employees whom it had agreed to designate.

[51] The grievances were filed in April 2000. As of that time, I consider that the employer could have speeded up the process of providing training to the grievors. Consequently, the grievances are allowed in part and I find, in all fairness, that the grievors should have been placed on the list of employees available for standby duty as early as the beginning of the summer of 2000. Given that the rotation of employees would have enabled the grievors to be assigned to standby duty twice since that time, the employer shall pay each grievor the equivalent of two weeks of compensation for standby duty.

[52] I have to point out that the employer itself admitted that it was slow since one week of compensation for standby duty was paid to the employees placed on the November 13, 2000 list as if this list had come into force at the end of September 2000.

**Jean-Pierre Tessier**  
**Board Member**

OTTAWA, December 21, 2001

PSSRB Translation

