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Citation: 2004 PSSRB 132



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

**KATHY L. ANSTRUTHER, PATRICIA ARMSTRONG, STELLA KATHERINE DEGAZIO,
HELEN HALL, GAIL JANSSEN, NICOLE LABELLE, MURIELLE LOSIER,
LYNN ERICA MARTIN, ELIZABETH TURCOTTE AND CHERYL DUNTON**

Grievors

and

**TREASURY BOARD
(Department of Human Resources and Skills Development)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: Guy Giguère, Deputy Chairperson

For the Grievors: Cécile La Bissonnière, Public Service Alliance of Canada

For the Employer: Jeff Laviolette

Note: The parties have agreed to deal with the grievance by way of expedited adjudication. The decision is final and binding on the parties and cannot constitute a precedent or be referred for judicial review to the Federal Court.

Heard at Ottawa, Ontario,
August 27, 2004.

REASONS FOR DECISION

[1] From March 26 to 28, 1999, the Niagara region of the former Human Resources Development Canada (HRDC) conducted a mass recruitment exercise for a Planet Hollywood restaurant in Niagara Falls, Ontario.

[2] Six employees (five officers and one coordinator) working in the Employment Program at HRDC were offered to work overtime over a weekend to conduct interviews and provide other assistance in relation to the screening of applicants at a job fair for the Planet Hollywood Restaurant.

[3] The employees were selected based on their past demonstrated ability to conduct thorough employment interviews, their ability to select suitable applicants in a short time period and their knowledge of interview techniques. The selection was also based on those employees who could be operationally spared from normal duties on Friday, March 26, 1999, as the project started on that Friday and the selected employees were required to be there.

[4] These grievances were filed in April 1999. The grievors were not selected for the work in question and are grieving that the employer failed to offer them overtime work on an equitable basis among the readily available qualified employees, as provided for in the collective agreement.

[5] Subclause 28.05(a) is the relevant provision of the collective agreement and reads as follows:

(a) *Subject to the operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees.*

[6] An agreed statement of facts was produced at the beginning of the hearing. In the agreed statement of facts it is indicated that, as a general rule, employees working in the Insurance Program had significantly more overtime opportunities than their colleagues working in the Employment Program. As well, a chart was produced in evidence by the employer's representative that indicated overall that the grievors had as much opportunity to work overtime during the fiscal year in 1998 as the employees who participated in the job fair on March 27 and 28, 1999.

REASONS FOR DECISION

[7] At the time that the employer selected the employees to participate in the job fair in March 1999, it was preparing an information session for staff that might be interested in participating in these types of events in the future. Following this information session, a list of employees who were interested in working in similar events was established.

Decision

[8] The question of equitable assignment of overtime has been the subject of many decisions of the Public Service Staff Relations Board (*Sumanik*, PSSRB File No. 166-2-395 (1971); *Foisy v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-2-17174 and 17175 (1989) (QL); *Evans v. Treasury Board (Solicitor General - Correctional Service Canada)*, PSSRB File No. 166-2-17195 (1988); and *Lagacé v. Treasury Board (Solicitor General - Correctional Service Canada)* PSSRB File No. 166-2-28007 (1999) (QL)). The word "equitable", as found in the collective agreement, does not have the same meaning as the word "equal". Therefore, to determine whether overtime work has been allocated equitably, an assessment of the allocation of overtime work must be made over a longer period than just one day. A period of one year to assess whether overtime work has been attributed equally is considered in the jurisprudence to be reasonable.

[9] The evidence that I have before me is that the overtime work was assigned equitably over a period of one year. Therefore, the grievances are denied.

**Guy Giguère,
Deputy Chairperson**

OTTAWA, September 3, 2004.