Date: 20030307

Files: 166-2-31214
166-2-31215

Citation: 2003 PSSRB 21

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

MARC CHOUINARD

Grievor

and

TREASURY BOARD
(Indian and Northern Affairs Canada)

Employer

EXPEDITED ADJUDICATION
DECISION

Before: Guy Giguère, Deputy Chairperson

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

For the Employer: Marie-Josée Lemieux

Heard at Ottawa, Ontario,
February 28, 2003.

[1] On May 10, 2000, Mr. Chouinard, a seasonal indeterminate tower person (GS-PRC-2), filed a grievance stating that a shortened season for tower persons from four months to three and one-half months was in contravention of the collective agreement between the Treasury Board and the Public Service Alliance of Canada for the Operational Services group, Appendix "C", clause 2.12.

[2] On April 4, 2001, Mr. Chouinard filed a similar grievance concerning the shortened 2001 season, which was for three and one-half months and not four months, as provided for in the collective agreement at Appendix "C", clause 2.12.

[3] The applicable clauses of the Operational Services group collective agreement are as follows:

> *25.07 An employee's scheduled hours of work shall not be construed as guaranteeing the employee minimum or maximum hours of work.*
>
> *APPENDIX "C"*
>
> *2.09 Couriers, Towermen and Harbour Managers are entitled to receive compensation at:*
>
> *(a) straight-time rates for all hours compensated within a cycle up to a total to be determined by the following formula:*
>
> $$\frac{\text{Number of Calendar Days in Cycle X 40}}{7}$$
>
> *(b) time and one-half (1 1/2) for all other hours worked.*
>
> *2.12 Towermen will have a four (4)-month cycle equivalent to six hundred and ninety-six (696) hours commencing on the first day in the season on which an employee is assigned to the position of Towerman. Any remaining period of work in a season will be considered a cycle.*

[4] The employer submitted that the decision to shorten the fire season to three and one-half months was based on sound operational reasons as statistics showed that few, if any, fires occur during the first two weeks of May. Mr. Chouinard was advised by the employer of the shortened fire season in his recall letter.

[5] The employer explained in its submission that it calculated the rate of pay based on a shortened fire season using the formula in Appendix "C", subclause 2.09(a). As there were 110 calendar days between May 14 and August 31, 2001, using the formula 110 x 40 ÷ 7 = 628, Mr. Chouinard was paid at a rate of pay of time and one-half for all other hours worked after 628 hours had been completed in the 2001 season. If the employer used clause 2.12 of Appendix "C" to calculate the rate of pay, Mr. Chouinard would have been paid less, as overtime would have been calculated only after 696 hours had been worked at straight time. The same formula was applied to calculate the rate of pay of Mr. Chouinard for the 2000 fire season.

[6] It is a standard rule of construction of collective agreements that collective agreements should be read as a whole. Accordingly, clauses should be interpreted in light of the entire collective agreement. If the collective agreement were interpreted in the way proposed by these grievances, the calculations for the rate of pay would be based solely on clause 2.12 of Appendix "C". This would imply that clause 25.07 of the collective agreement and clause 2.09 of Appendix "C" would be null or rendered absurd. This cannot be so. Under clause 25.07 of the collective agreement, the employer is under no obligation to guarantee to an employee a minimum number of hours of work. Therefore, the fact that a four-month cycle is defined in clause 2.12 as equivalent to 696 hours in a season does not guarantee that the employee will be working that number of hours. Hence, the employee can be scheduled for a lesser number of days and hours for a season than that specified in clause 2.12.

[7] Accordingly, the grievances are denied.

Guy Giguère,
Deputy Chairperson.

OTTAWA, March 7, 2003.