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Date: 20030704

File: 166-32-31497

Citation: 2003 PSSRB 55

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

BARRY JEFFERIES ET AL.

Grievors

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Before: D.R. Quigley, Board Member

For the Grievor: Sherrill Robinson-Wilson, Public Service Alliance of Canada

For the Employer: Stéphane Hould, Counsel

Heard at Hamilton, Ontario,
May 6, 2003.

[1] This is a reference to adjudication of a grievance filed by Barry Jefferies, Sheik Bacchus, Gary Dutchak, Mike Fitzgerald, Debbie Gallagher, François Lafrance, E.J. (Ted) McCarroll, Mike McDonald, Alan Mutrie, Don Radford, Robert Stagg, John Stewart, Carl Vance, Ken Wallace and Donald Wamil.

[2] The parties introduced an "Agreed Statement of Facts" (A-1), which reads as follows:

Barry Jefferies et al – PSSRB File No. 166-32-31497

Agreed Statement of Facts

1. *The applicable Collective Agreement for these grievances is the Collective Agreement between the Canadian Food Inspection Agency and the Public Service Alliance of Canada which was signed on July 6, 2001 and which expired on December 31, 2002.*

2. *At the time that they filed their grievances the grievors were all Meat Inspectors (EG) who were working at the Better Beef Plant, 781 York Road, Guelph, Ontario.*

3. *The grievors claimed for mileage for the use of their own automobiles from their residence to their place of work and from their place of work to their residence for the shift that each of them worked on Monday November 12, 2001.*

4. *The Canadian Food Inspection Agency (CFIA) has denied the grievors' claim for mileage expenses on November 12, 2001.*

5. *November 12, 2001 was the designated paid holiday for Rememberance Day* (sic) as *per Article 31 of the Collective Agreement.*

[3] Counsel for the employer called one witness and did not file any exhibits; the grievors' representative called one witness, Barry Jefferies, and filed two exhibits. Neither party requested the exclusion of witnesses and they each made brief opening statements.

[4] Barry Jefferies has worked as a Meat Inspector since 1992 and is currently classified at the EG-02 group and level. His testimony can be summarized as follows.

[5] The normal hours of work at the Better Beef Plant are 6:35 a.m. to 3:05 p.m., Monday to Friday; occasionally, it is open on a Saturday and/or Sunday. Mr. Jefferies testified that, in the past few years, the Plant has opened on only two statutory holidays, specifically, Easter Monday and Remembrance Day. The Plant has not opened on the other designated paid holidays noted in Article 31 of the collective agreement between the Canadian Food Inspection Agency (CFIA) and the Public Service Alliance of Canada (PSAC), signed on July 6, 2001, with an expiry date of December 31, 2002.

[6] Mr. Jefferies testified that since he began working at the CFIA, Meat Inspectors have worked on the designated paid holidays mentioned above (i.e. Easter Monday and Remembrance Day), as other staff at the Plant is required to work and the Plant cannot operate without the Meat Inspectors.

[7] This grievance arose as a result of the grievors having worked on Monday, November 12, 2001 (Remembrance Day).

[8] Mr. Jefferies stated that if a Meat Inspector wished to take a day off and it was a designated paid holiday, permission would be required of the supervisor, Dr. E.J. Benson, a VI-02. Dr. Benson is in charge of the Better Beef Plant and has authority to approve or deny requests for leave. If an employee requests leave on a designated paid holiday, Dr. Benson will deny the request for leave unless he can backfill the position.

[9] Mr. Jefferies was a union representative for the PSAC and, as there had been disagreements in the past with respect to claims for mileage for reporting to work on a designated paid holiday, he chose to be proactive and approach Dr. Benson directly with respect to this issue. Mr. Jefferies asked Dr. Benson to authorize, in writing, reimbursement for mileage, as Mr. Jefferies intended to use his personal vehicle to report for work on November 12, 2001.

[10] The witness identified Exhibit G-2 as a memorandum from Dr. Benson to him, dated November 9, 2001, which states:

> *Subject : Private Vehicle Holiday*
>
> *This memo serves to indicate approval for inspection staff to use private vehicles to report to work on the statutory holiday, Monday, Nov 12, 2001.*

[11] Mr. Jefferies stated that, to the best of his recollection, all of the grievors drove their personal vehicles to work that day. He stated that, in his case, there is no public transportation available near his residence.

[12] Mr. Jefferies testified that he was paid for working on November 12, 2001, at time and one-half for the first seven and one-half hours and then double time for the subsequent hours, according to the collective agreement.

[13] Mr. Jefferies stated that the grievors submitted their claims for mileage to Dr. Benson, who then informed them that senior management had instructed him not to reimburse the grievors. Hence, this grievance was filed on November 13, 2001.

[14] In cross-examination, Mr. Jefferies admitted that he was aware of previous instances where reimbursement for mileage had been denied. However, he stated that after receipt of the memorandum from Dr. Benson, "I truly expected to be paid my travel mileage claim."

[15] Dr. J. Tarkowski has held different positions during his career at the CFIA, including that of Meat Inspector. Currently, he is at the VM-03 group and level and is responsible for supervising different CFIA programs such as meat inspection, hygiene and animal health. He is also in charge of two slaughterhouses and 20 meat inspection units. Dr. Benson reports directly to him.

[16] Dr. Tarkowski testified that he only became aware on November 13, 2001, of the memorandum (Exhibit G-2) that Dr. Benson sent to Mr. Jefferies approving the use of private vehicles for employees to report for work on November 12, 2001. He stated that upon becoming aware of the memorandum, he had a closed-door meeting with Dr. Benson at which time he outlined CFIA's position with respect to mileage claims for reporting to work on a designated holiday, and in particular he made reference to clause 31.06 of the collective agreement.

[17] The witness testified that Dr. Benson preferred his own interpretation of clause 31.06. Dr. Tarkowski overruled Dr. Benson's interpretation and informed him that he was to deny the grievors' mileage claims. He also informed Dr. Benson that any future decisions with respect to an interpretation of a clause in the collective agreement were to be discussed with him or an advisor from Human Resources. The witness stated

that no consultation had taken place between him and Dr. Benson with regard to Exhibit G-2.

[18] It was agreed during cross-examination that Dr. Benson has the authority to approve, subject to operational requirements, overtime, acting assignments, leave requests (vacation, sick, bereavement), meal allowances and mileage claims. However, in reply, the witness stated: "G-2 was the only time during Dr. Benson's six or seven years as supervisor that he authorized a mileage claim for reporting to work on a statutory holiday."

ARGUMENTS

For the Grievors

[19] The grievors used their personal vehicles to report for work on a statutory holiday - November 12, 2001. The entitlement to claim mileage is supported by the wording of clause 31.06 of the collective agreement.

[20] The Meat Inspectors were required to work; they had no choice, as testified by Mr. Jefferies. He also testified that a leave form was required in order to take time off and if the supervisor could not find a relief, the requested leave would not be approved.

[21] In Mr. Jefferies' case, public transportation was not available and therefore he had no choice but to use his private vehicle.

[22] As well, the grievors' supervisor, Dr. Benson, confirmed (Exhibit G-2) that their mileage claims would be approved.

[23] The grievors' representative submitted the following decision: *Eckert et al.* (Board files 166-2-14893 to 98).

For the Employer

[24] Counsel for the employer submitted that for clause 31.06 to apply, the grievors must have been required to report to work on a designated paid holiday that was outside their regular work schedule.

[25] Clause 31.05 states: "When an employee works on a holiday" and clause 31.06 states: "When an employee is required to report for work and reports". Counsel for the employer then referred to other clauses in the collective agreement with identical language, such as 29.04 (Standby): "When an employee is required to report for work and reports", clause 30.01(a) (Reporting Pay): "When an employee is required to report and reports to work" and clause 27.05(c) (Overtime): "When an employee is required to report for work and reports." All these clauses use specific language; if an employee is required to report and reports to work outside his/her normal scheduled hours of work, the employee is entitled to the provisions contained in these clauses.

[26] If the grievors' position is upheld, it will give a benefit to employees who drive to work but those who use public transportation will not receive that benefit. The intent of clause 31.06 is to provide reimbursement for mileage for special instances where work is scheduled on short notice. Exhibit G-2 was approval for inspection staff to use their private vehicles to report to work on a statutory holiday (November 12, 2001) and not a promise to reimburse mileage.

[27] Counsel for the employer submitted the following decisions: *Graham, Revill and Armstrong et al.* (Board files 166-2-2735 to 37) and *Eckert et al.* (*supra*).

REASONS FOR DECISION

[28] Clauses 31.05 and 31.06 of the relevant collective agreement read as follows:

> ***31.05*** *When an employee works on a holiday, he or she shall be paid:*
>
> *(a) time and one-half (1 ½) for all hours worked up to the regular daily scheduled hours of work as specified in Article 24 of this collective agreement and double (2) time thereafter, in addition to the pay that the employee would have been granted had he or she not worked on the holiday,*
>
> *or*
>
> *(b) upon request, and with the approval of the Employer, the employee may be granted:*
>
> *(i) a day of leave with pay (straight-time rate of pay) at a later date in lieu of the holiday,*
>
> *and*

(ii) pay at one and one-half (1 ½) times the straight-time rate of pay for all hours worked up to the regular daily scheduled hours of work as specified by the Article 24 of this collective agreement,

and

(iii) pay at two (2) times the straight-time rate of pay for all hours worked by him or her on the holiday in excess of the regular daily scheduled hours of work as specified by the Article 24 of this collective agreement.

(c) Notwithstanding paragraphs (a) and (b), when an employee works on a holiday contiguous to a day of rest on which he or she also worked and received overtime in accordance with clause 27.01(b) or (c), he or she shall be paid in addition to the pay that he or she would have been granted had he or she not worked on the holiday, two (2) times his or her hourly rate of pay for all time worked.

(d) Subject to operational requirements and adequate advance notice, the Employer shall grant lieu days at such times as the employee may request.

(i) When in a fiscal year an employee has not been granted all of his or her lieu days as requested by him or her, at the employee's request, such lieu days shall be carried over for one (1) year.

(ii) In the absence of such request, unused lieu days shall be paid off at the employee's straight-time rate of pay in effect when the lieu day was earned.

31.06 *When an employee is required to report for work and reports on a designated holiday, the employee shall be paid the greater of:* (emphasis added)

(a) Compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period.

or

(b) compensation in accordance with the provisions of clause 31.05.

> *(c) when an employee is required to report for work and reports under the conditions described in 31.06(a) or (b) above, and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:*
>
> *(i) mileage allowance at the rate normally paid to an employee when authorized by the Employer to use his or her automobile when the employee travels by means of the employee's own automobile,*
>
> *or*
>
> *(ii) out-of-pocket expenses for other means of commercial transportation.*

[29] Mr. Jefferies testified his hours of work at the Better Beef Plant are from 6:35 a.m. to 3:05 p.m., Monday to Friday. Since 1992, he has worked on Easter Monday and on Remembrance Day due to the fact that the Plant's staff cannot work without the Meat Inspector services that he provides.

[30] Mr. Jefferies also testified that at the relevant time of this grievance, he was a union representative of the PSAC. He noted that clause 31.06 has been contentious, as there have been disagreements between the union and employer on its interpretation. He also testified that in an attempt to be proactive, he requested approval from his immediate supervisor, Dr. Benson, to use his private vehicle to report to work on November 12, 2001 (Exhibit G-2). Mr. Jefferies testified that he drove his vehicle, as there is no public transportation available near his residence, and submitted his claim for mileage to Dr. Benson. However, Dr. Benson later advised all the grievors that he had been instructed by Dr. Tarkowski not to reimburse them for mileage.

[31] The issue to be decided is whether an employee who is scheduled to work on a designated paid holiday and reports to work is entitled to be reimbursed for travel expenses, as provided for in clause 31.06(c).

[32] Under Article 31 (Designated Paid Holidays), clause 31.01 identifies Remembrance Day as a designated paid holiday.

[33] The evidence is clear that the grievors' at the time of this grievance worked as Meat Inspectors from Monday to Friday, at the Better Beef Plant. In the case at hand, November 12, 2001, was a Monday, a normally scheduled day of work.

[34] Clause 31.09 states: "Where operational requirements permit, the Employer shall not schedule an employee to work both December 25 and January 1 in the same holiday season." It is obvious by the language in this clause that the employer schedules employees to work on designated paid holidays, such as Christmas Day and New Year's Day. It is also obvious that if an employee works on a scheduled holiday, the provisions of clause 31.05 come into play.

[35] I agree with counsel for the employer that the words in clause 31.06 "required to report for work and reports" have been echoed in other clauses in the collective agreement (i.e. clause 29.04 (Standby), clause 30.01(a) (Reporting Pay) and clause 27.05(c) (Overtime)), and refer to when an employee reports for work outside his/her normal scheduled hours of work.

[36] It is my view that an employee who is required to report for work on a designated paid holiday that is not a regularly scheduled work day is entitled to a mileage allowance or reimbursement for out-of-pocket expenses incurred for other means of commercial transportation, as provided for in clause 31.06(c)(i) and (ii), if the employee receives prior authorization from the employer.

[37] Mr. Jefferies testified that clause 31.06 has been in contention since 1992. The grievors' representative argued that the payment of mileage had been a contentious issue in the past but did not argue or demonstrate that there was a practice of paying claims. Indeed, the evidence disclosed that this was the first time in six or seven years that Dr. Benson agreed to pay a mileage claim under the above-noted clause. It is my belief that Mr. Jefferies attempted to meet the conditions of clause 31.06(c)(ii) by obtaining the memorandum from Dr. Benson agreeing to reimbursement by the employer for the use of a private vehicle to drive in to work on a designated paid holiday. However, the grievors did not meet the requirements of the preamble in clause 31.06: "is required to report for work and reports." The grievors worked on a normally scheduled day of work, which happened to be a designated paid holiday.

[38] It is also my view that "is required to report to work and reports" is for instances when the employer needs the services of an employee on short notice and public transportation might not be available. Thereby, a premium is paid through the provisions of clause 31.06.

[39] The fact that Mr. Jefferies chose to live in an area where no public transportation is available is his choice. The employer is not liable for that choice and should not be expected to pay a mileage claim.

[40] Although Mr. Jefferies testified he believed that acquiring the memorandum from Dr. Benson (Exhibit G-2) ensured that he and the other grievors would be reimbursed for mileage, I wish to be clear that there is no such entitlement; Dr. Benson's interpretation of clause 31.06 was an error. A promise by the employer not to apply the terms of the collective agreement might, in certain circumstances, set up an entitlement in a case where the doctrine of estoppel applies. However, in order to prove a case based on estoppel, one must first show that the promise was given with full knowledge on the part of the promissor regarding their rights (i.e. it has to be proven that the employer knew its rights and yet made the promise knowing that they were giving up a right they held). The grievors' representative did not lead evidence to show that Dr. Benson knew that the mileage claims were not permissible under the terms of the collective agreement when he issued the note. Secondly, Mr. Jefferies placed no reliance at all on the note, given that he needed to use his vehicle to get to work since no public transportation was available that day from his home. The grievors' representative failed to prove that any of the grievors relied upon the note and used their cars solely as a result of Dr. Benson having issued the note. As former Vice-Chairman J.M. Cantin stated in *Eckert et al.* (Board files 166-2-14893 to 14898), "It is human to err and an error cannot change the provisions of the collective agreement."

[41] For all these reasons, this grievance is denied.

D.R. Quigley,
Board Member

OTTAWA, July 4, 2003.