

Date: 20040607

Files: 166-2-31847
166-2-31848

Citation: 2004 PSSRB 59



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

ETHEL FARRALES AND BRENDA MAE KISS

Grievors

and

TREASURY BOARD
(Human Resources Development Canada)

Employer

EXPEDITED ADJUDICATION DECISION



Before: Yvon Tarte, Chairperson

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

For the Employer: Joel Stelpstra

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 Saint-Sauveur, Quebec,
May 13, 2004.

REASONS FOR DECISION

[1] These grievances are concerned with the interpretation of the Program Administration collective agreement entered into between the Public Service Alliance of Canada and the Treasury Board as it relates to overtime compensation for part-time employees. The parties have filed the following agreed statement of facts:

- 1) *Both grievors, Ethel Faralles and Brenda Kiss, work for HRDC in the Regional Shared Services Division in Vancouver, BC. Both individuals perform the duties of a Service Delivery Representative at the CR-05 group and level. Both individuals are determinate part-time employees and are guaranteed 30 hours of work per week between Monday and Friday.*
- 2) *The nature of the grievance pertains to the application of Articles 2.01(b), 28.07(a) and 62.04 of the Program Administration agreement between the Public Service Alliance of Canada and Treasury Board, which has an expiry date of June 20, 2003.*

Article 2.01(b) (Definition of Overtime) states:

"In the case of a part-time employee, authorized work in excess of seven and one half (7.5) hours per day or thirty-seven and one-half (37.5) hours per week, but does not include time worked on a holiday".

Article 28.07(a) (Overtime on a Day of Rest) states:

"An employee who is required to work an [sic] a first day of rest is entitled to compensation at one and a half times for the first seven and a half hours, and at two times thereafter".

Article 62.03 (Part-time Employees) states:

"Part-time employees are entitled to overtime compensation in accordance with subparagraphs (b) and (c) of the overtime definition in clause 2.01".

Article 62.04 (Part-time Employees) states:

"The days of rest provisions of this agreement apply only in a week when a part-time employee has worked 5 days or 37.5 hours".

- 3) *The employees have grieved management's decision to not pay overtime rates for work performed on Saturday January 12th, 2002. The grievors contend that this was a day of rest and thus should be paid at the rates outlined in Article 28.07(a).*

- 4) *The employees were scheduled to work 30 hours, Monday to Friday, during the week in question and were also required to attend a training session on the following day, Saturday January 12th, 2002. They both attended.*
- 5) *Ms. Farrales worked 30 hours, from Monday to Friday, January 7th to 11th, 2002, and an additional 7.5 hours on Saturday January 12th, 2002, for a total of 37.5 hours for the week. She was compensated at the regular rate of pay for a total of 7.5 hours for Saturday January 12th, 2002.*
- 6) *From Monday to Friday January 7th to 11th, 2002, Ms. Kiss worked a total of 33.25 hours: 28 hours out of her regular scheduled hours, as she took 2 hours of leave without pay on January 7th, 2002, and 5.25 hours in addition to her regular work week, followed by the 7.5 hours of training on Saturday January 12th, 2002 for a total of 40.75 hours.*

She was compensated for 4.25 hours at the regular rate of pay and for 3.25 hours at the 1.5 rate of pay.

[2] The grievors point out the fact that article 62.04 of the collective agreement was modified during the last round of bargaining to refer to "5 days or 37.5 hours" rather than "5 days and 37.5 hours" as it was prior to the amendment. This change must be given meaning. The employer is interpreting the overtime provisions for part-time employees as if the change had never been made. Since both grievors worked Monday to Friday, they are entitled to overtime compensation for all hours worked on the Saturday.

[3] The employer agrees that the various clauses of the agreement must be read in context and as a whole. The grievors' proposed interpretation ignores other provisions dealing with overtime compensation.

[4] I agree that a collective agreement must be read as a whole. Individual articles should never be interpreted in isolation. In this case, the parties have specifically agreed that overtime for part-time employees is "authorized work in excess of seven and one half (7.5) hours per day or thirty-seven and one half (37.5) hours per week...". The specificity of this definition makes it impossible to accept the grievor's position in this case. Articles 62.03 and 62.04 can only have effect once the definition of overtime

has been met. In other words, their application can only be triggered once overtime, as defined, has been worked.

The grievances are denied.

**Yvon Tarte,
Chairperson**

Ottawa, June 7, 2004.