

Date: 20040603

File: 166-2-31863

Citation: 2004 PSSRB 47



Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

LEO SWEENEY

Grievor

and

**TREASURY BOARD
(Canadian Grain Commission)**

Employer

EXPEDITED ADJUDICATION DECISION

Before: [Yvon Tarte, Chairperson](#)

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

For the Employer: [Drew Heavens](#)

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] This grievance is concerned with the Operational Services collective agreement entered into between the parties as it relates to the assignment of overtime work. The parties have agreed to the following statement of facts:

- 1) *The grievor, Leo Sweeney, works for the Canadian Grain Commission in the weighing section at Vancouver. At the time the grievance was filed, his group and level was GL-GHW-8B2.*
- 2) *At issue is Article 29.04 of the Operational Services collective agreement between the Public Service Alliance of Canada and Treasury Board of Canada, which has the expiry date of August 4th, 2000. This article states the following:*

29.04 Assignment of Overtime Work

Subject to the operational requirements of the service, the Employer shall make every reasonable effort:

- (a) to allocate overtime work on an equitable basis among readily available qualified employees,
 - and
 - (b) to give employees who are required to work overtime adequate advance notice of this requirement.
- 3) *Mr. Sweeney has grieved management's allocation of an overtime day shipping shift on October 15th, 2001.*
 - 4) *Several years ago, local management and the local Union have co-developed an Overtime Protocol in order to equitably allocate overtime to employees at the various Vancouver terminals.*
 - 5) *On October 15, 2001, according to the Overtime Protocol, the grievor was at the top of the list to be offered the overtime shift in question (a day shipping shift at Cascadia).*
 - 6) *At the relevant times, day receiving shifts began at 6:26 a.m., although the actual receiving process began at approximately 7:00 a.m. Day shipping shifts began at 7:26 a.m., although the actual shipping process began at approximately 8:00 a.m.*
 - 7) *On October 14/15, 2001, the grievor was scheduled to work a graveyard-shipping shift at the Cascadia*

terminal. However, as there was no vessel loading there, he was relocated to work that shift at the JRI terminal. It is not uncommon that employees are relocated from one terminal to another, depending upon where work is required. The distance between these two terminals is no more than 15km.

- 8) *The grievor worked until approximately 7:30 a.m. when his replacement arrived and left the JRI premises around this time.*
- 9) *On October 15, 2001, the Operations Supervisor reported to work between 6:15 and 6:30 a.m. He had to find replacements for three receiving shifts and two shipping shifts (one, the overtime shipping in question, was at Cascadia), as employees had called in sick.*
- 10) *The Operations Supervisor began his search for the receiving shift replacements at approximately 6:40 to 6:45 a.m. and concluded at approximately 7:30 to 7:45 a.m.*
- 11) *Only after filling the receiving shift, did the Operations Supervisor begin his search to find replacements for the shipping shifts. In accordance with the Overtime Protocol, he did call the grievor at JRI around 7:40 a.m., but he had already left the premises.*
- 12) *In accordance with the Overtime Protocol, another employee ended up working the overtime shipping shift at Cascadia that the grievor believes he should have worked.*

[2] Under article 29.04 of the collective agreement, the employer must, subject to operational requirements, allocate overtime work on an equitable basis among readily available qualified employees. I believe it has done so in this case.

[3] Although the grievor believes the person who was given the overtime shift in question was not qualified as a shipping weigher, the employer had the right in the circumstances to determine who was qualified to work.

[4] Furthermore, adjudicators have long held that the equitable assignment of overtime pursuant to the provisions at issue in this case cannot be assessed on the basis of a single event, but rather must be determined on the basis of assignments over a reasonable period of time.

[5] Given the facts of this case, I must conclude that the employer has not violated article 29.04 of the collective agreement.

[6] The grievance is denied.

**Yvon Tarte,
Chairperson**

Ottawa, June 3, 2004.