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Citation: 2004 PSSRB 176

Public Service Staff Relations Act

Before the Public Service Staff Relations Board

BETWEEN

SEAN HARRISON

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

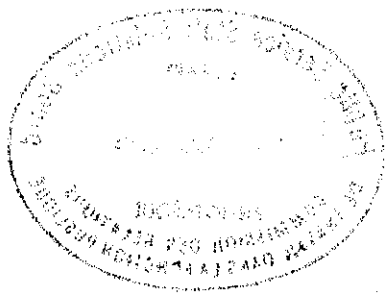
Employer

Before: Sylvie Matteau, Deputy Chairperson

For the Grievor: John Mancini, UCCO-SACC-CSN

For the Employer: Jennifer Champagne, counsel

Heard at Moncton (New Brunswick),
November 24, 2004.



[1] Mr. Sean Harrison, the grievor, is a correctional officer (CX-01), at Springhill, New Brunswick, a multi-level class correctional institution. He has been employed with the Correctional Service of Canada for four years.

[2] On October 31, 2001, Mr. Harrison filed a grievance regarding the interpretation of clause 26.06 of the Collective Agreement between the Treasury Board and the Union of Canadian Correctional Officers, expiring May 31, 2002, as it applies to his circumstances of October 8, 2001. He testified on his own behalf and Mr. Croydon Wood, the supervisor currently responsible for the work schedule rosters, testified on behalf of the employer.

The Circumstances

[3] The grievor testified that on Thanksgiving Monday, October 8 2001, he arrived at work at 2:20 p.m. for his scheduled eight-hour evening shift (from 3:00 p.m. to 11:00 p.m.). He was doing so in accordance with the main roster sheet (Exhibit F-1), posted in the hall outside the supervisor's office. That roster indicates that the grievor was scheduled to work as a substitute on the evening shift of that designated holiday (showing the letter "E" indicating the evening shift).

[4] Upon reporting to the supervisor, also referred to as the keeper, he was told that he had been "H'ed", meaning that he was not designated to work on that particular statutory holiday, as appears from the "keeper's role call sheet" (Exhibit F-2). He was showed this role call at that time. He was then asked to go home. He subsequently left as required and did not work on that day.

[5] During the same evening, it appears that employees were called to work overtime, among them two CX-01 employees, as appears from handwritten annotations made to the main roster sheet (Exhibit F-1).

[6] Following the filing of Mr. Harrison's grievance, the employer offered to compensate him the equivalent of four hours, at the rate of time and a half. This was said to have been done in recognition of the fact that he did report to work and had to go home, due to an administrative error, a discrepancy appearing between the two rosters. The grievor testified that he did not agree with this compensation. The employer proceeded nonetheless with this offer, as appears from the decision

reproduced in its November 19, 2001 response to the first-level grievance process, a copy of which has been filed with the Board.

[7] The grievor admitted receiving payment of that compensation in April 2004, as appears from Exhibit E-1, which is an overtime report dated April 4, 2004, and from the regular extra duty report dated May 5, 2004 (Exhibit E-2).

[8] Mr. Wood then testified. He is a correctional supervisor (CX-03) and is currently responsible for the work roster at the Springhill Institution. He has been an employee at the Correctional Service of Canada since 1974. Mr. Wood pointed out that he was not the officer responsible for the roster at the time of this occurrence. However, he attempted to reconstitute the events in preparation for this hearing. His testimony relied on the information he was able to garner regarding the specific events of October 8, 2001, as well as his knowledge of and experience with procedures as they are now applied under his direction.

[9] As appears from the main roster sheet, a handwritten "H" has been added on top of the typewritten "E" for the day of October 8, 2001, on the grievor's schedule. This would have been done on that day. Mr. Wood confirmed that according to the original main roster, the grievor would have been a substitute on that day and would have been on the evening ("E") shift.

[10] He also confirmed that the letter "H" found on the keeper's roll call sheet (Exhibit F-2) means that the grievor was scheduled to be "statted off" on that day, meaning that he was not required to work on the designated statutory holiday. That sheet is normally in the supervisor's office and is used to verify attendance and staffing needs on any particular day or shift, as explained by both the grievor and Mr. Wood.

[11] Mr. Wood specified that, at the time, these sheets were done manually and recognized that the discrepancy would have to have been an error made by the person in charge. He confirmed that the payment of the compensation in April 2004 to Mr. Harrison was in response to the grievance and in accordance with the decision made at the first-level grievance process. He then referred to clause 26.06 of the Collective Agreement. He explained that the provision would have required that the grievor be paid a compensation equivalent to three hours, according to sub-clause 26.06(b), but that the response to the grievance at the first level provided a

compensation of four hours. He did not want to change that. He was not aware, however, how the determination was made for a four-hour compensation or what guideline or provision it was based on.

[12] Mr. Wood also confirmed that three employees were called to work overtime on that day but clarified the fact that they would have been called before the grievor reported to work, on the basis of the "keeper's roll call sheet". This call would also have been made due to the fact that, as it appears from handwritten notes on that sheet, at least one employee called in sick or unable to report to work.

[13] Finally, Mr. Wood confirmed that the decision to "H" someone on a particular statutory holiday is done without consultation with the union but in accordance with the principles established through general discussions with the union on the procedures for these determinations.

Arguments

[14] Arguments on the part of the grievor were brief. The grievor's representative was of the opinion that the Collective Agreement is very clear, namely clause 26.06. It provides for compensation in circumstances such as those of the grievor on the day of October 8, 2001. Clause 26.06 reads as follows:

> ***26.06*** *When an employee is required to report for work and reports for work on a designated holiday, the employee shall be paid the greater of:*
>
> *(a) compensation in accordance with the provisions of clause 26.05;*
>
> *or*
>
> *(b) three (3) hours pay at the applicable overtime rate of pay.*

[15] Clause 26.05 read as follows:

> ***26.05*** *When an employee works on a holiday, he or she shall be paid time and one-half (1 1/2) for all hours worked up to the regular daily scheduled hours of work as specified in Article 21 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.*

[16] There is no question that clause 26.06 applies. The grievor was required to work on that day; he reported to work and was told to go home. As for which of the

two sub-clauses applies, without a doubt the greater of the compensations to be paid is the one found under sub-clause 26.06(a); the grievor should be compensated accordingly for a full day.

[17] The employer is in disagreement and maintains that the grievor was not required to work on October 8, 2001, and, therefore, cannot be compensated according to clause 26.06. In fact, he reported to work as a result of an administrative error.

[18] In recognition of its administrative mistake, the employer compensated the grievor for an equivalent of four hours at the rate of time and a half. This compensation was not, however, calculated through the application of clause 26.06 of the Collective Agreement. The compensation paid should be recognized and maintained as such.

[19] Alternatively, the employer's counsel argues that if I were to determine that clause 26.06 is to apply in the circumstances, sub-clause 26.06(b) would be the appropriate disposition to follow because the grievor did not work on that day. In her opinion, sub-clause 26.06(a) would apply only when an actually worked on such a day.

[20] Finally, counsel for the employer made me aware that the overtime issue arising from the questions put to the witnesses is not part of the grievance and, moreover, that the rate of pay is not at issue.

[21] In reply, the grievor's representative argues that if we were to follow the employer's logic, sub-clause 26.06(a) would be meaningless. It refers to clause 26.05 as a means to determine compensation when an employee reports for work as required and is told to return home. In this case, the grievor reported for work according to the main roster. In his opinion, there can be no requirements to work; it is a compensation for not having been allowed to work, as otherwise required.

[22] Furthermore, in its response to the first-level grievance process, the employer has admitted that the grievor was required to work on that day. In conclusion, the compensation was calculated under the wrong sub-clause of clause 26.06.

Decision

[23] Mr. Harrison grieved "the actions of the employer because it violates clause 26.06 of the Collective Agreement and/or any other clause in the Collective Agreement, which may be applicable". The grievor alleges that he reported to work on October 8, 2001, as required by the main roster (Exhibit F-1), which showed he was to work the evening shift on that day. However, he was sent home instead because his supervisor's roll call sheet (Exhibit F-2) indicated that he was not scheduled to work on that designated holiday. He requests to be fully compensated for a full shift at holiday rate of pay and his record made whole.

[24] The evidence is that the grievor did report to work on that day for his evening shift, as per the main roster sheet displayed for all employees to see outside the supervisor's office. It was also established that the "keeper's roll call sheet" is kept inside the office for use by the supervisor, to whom employees report on arrival, and in order to establish staffing needs (call backs) on any given day. The grievor was then notified that he was not scheduled to work according to the roll call sheet and was asked to return home. These two documents are entirely under the employer's control. The discrepancy between the two sheets has been admitted by the employer, who recognized it as an administrative error.

[25] In the response to the grievance at the first level, dated November 19, 2001, the employer admitted that the grievor was not notified in time that he was not required to work on that day "Whereas the employer failed to mark on the main roster that the above mentioned employee was "H" on October 8, 2001, and the employee did report for his scheduled shift, the employee was sent home; whereas it was no fault of the employee, he should be compensated for four hours at the applicable rate." I must point out that this is not an admission that the grievor was required to work, as suggested by the grievor's representative.

[26] Having recognized this mistake and while maintaining that the grievor was not required to work on that day, but reported to work due to an administrative error, the employer paid an arbitrary compensation equivalent to four hours at the rate of time and a half to the grievor. The grievor admitted receiving this compensation in April 2004.

[27] The question then is: does clause 26.06 apply in the circumstances and if so, which of its sub-clauses should be used to determine the compensation to the grievor?

[28] In my opinion, clause 26.06 does apply. According to the information available to him on that day, the grievor was required to work on that designated holiday and reported as such. The two conditions to trigger clause 26.06 have been met. This clause is meant to provide the means to calculate the compensation in such circumstances.

[29] Clause 26.06 provides for a determination as to which of the two amounts of compensation under sub-clauses 26.06(a) or (b) would be the greatest in any particular case. In order to determine which sub-clause is to apply, they need to be calculated.

[30] In this case, the grievor did not work on that day; he was sent home immediately. In accordance with sub-clause 26.06(a), the compensation would then be nil, the number of hours to be used in its formula being zero.

[31] Under sub-clause 26.06(b), we find a minimum amount of compensation to be paid to the employee who reports to work as required and is immediately sent home. That compensation will provide the employee with a minimum of three hours at the overtime rate, whether or not the employee worked one, two, three hours, or none at all. The latter is what happened in this case. The grievor should benefit from this minimum guarantee of a three-hour compensation, paid at the applicable overtime rate of pay.

[32] In other words, sub-clause 26.06(a) will apply when an employee actually works, when required to do so, for any time over three hours. To interpret clause 26.06 in any other way would not make sense and ignores the clear wording of sub-clause 26.06(a), which refers us to clause 26.05, in order to determine the entitlement to a particular amount of compensation. The interpretation proposed by the grievor would mean that sub-clause 26.06(b) would never apply. Clause 26.06 is drafted in a way that requires compensation to be paid to the employee, who is required to work on a designated holiday and reports to work. Sub-clauses 26.06(a) or (b) are then used to calculate the compensation, depending on whether the employee ended up working some period of time or not.

[33] The rate of pay was not at issue.

[34] The grievance is therefore denied and, the employer having offered to maintain the compensation paid in April 2004, no breach of the Collective Agreement has occurred and the grievor has been appropriately compensated for that day.

Sylvie Matteau
Deputy Chairperson

OTTAWA, December 17, 2004