Date: 2018

File: 566-02-3903

Citation: 2018 FPSLREB 73

Federal Public Sector Labour Relations and Employment Board Act and *Federal Public Sector Labour Relations Act*

Before a panel of the Federal Public Sector Labour Relations and Employment Board

BETWEEN

JASON MCGAGHEY

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

Indexed as
McGaghey v. Treasury Board (Correctional Service of Canada)

In the matter of an individual grievance referred to adjudication

Before: Bryan R. Gray, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: François Ouellette, Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN

For the Employer: Rebecca Sewel, counsel

Decided on the basis of written submissions, filed February 9 and 13 and March 12, 2018.

I. Summary

[1] Jason McGaghey ("the grievor") was a correctional officer (classified CX-2). He gave notification of being available to accept an overtime shift. Shortly after that, a fellow correctional officer (also classified CX-2) reported to the grievor's managers as being unable to attend work, thus creating a need for the assignment of an overtime shift. Despite the grievor being able and registered on the proper database roster for an overtime assignment, his managers assigned it to a different officer, who was classified CX-1. His managers later admitted that this assignment, to an officer classified at a lower class CX was made in error.

[2] The grievor alleges that the error breached the collective agreement. He requests financial compensation paid at the overtime rate of 1.5 times his normal pay rate for the 8 hours of overtime he claims he should have been assigned.

[3] This grievance requires that I interpret the collective agreement to determine whether the error scheduling the overtime shift created an entitlement for the grievor to that specific shift or whether the collective agreement requirement for the equitable distribution of overtime should be measured over a period of time whereby the employer may be able to prove that the grievor was treated equitably in his assignments of overtime.

[4] Having read the collective agreement and the jurisprudence submitted by the parties dealing with the equitable assignment of overtime, I rely upon previous decisions of this Board, one of which the Federal Court upheld on judicial review, and I conclude that the grievor is not entitled to any specific overtime shift but rather that his equitable share of overtime assignments should be measured over a period of time. I reject his grievance as the evidence shows that he received a slightly above-average allocation of overtime over the year at issue.

[5] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (PSLREB) to replace the former Public Service Labour Relations Board (PSLRB) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 366 to 466 of the *Economic Action Plan 2013 Act*, No. 2 (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to s. 393 of the *Economic Action Plan*

2013 Act, No. 2, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s. 2; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act*, No. 2.

[6] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board ("the Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* ("the *Act*").

II. Facts

[7] This grievance was referred to adjudication pursuant to s. 209(1)(a) of the *Act*, which provides for referral of an individual grievance to adjudication in a dispute over interpreting or applying a collective agreement provision.

[8] The parties helpfully provided an agreed statement of facts dated January 11, 2018, which provided the following information:

> The grievor began his career with the Correctional Service of Canada (the employer) in December 2001 and at the relevant time of this grievance was employed as a CX-02 at the Saskatchewan penitentiary;
>
> At the relevant times in this matter, the parties were bound by the collective agreement signed between the Treasury Board and the Union of [sic] Correctional Officers – Syndicat des Agents Correctionnels du Canada – CSN (the Parties) on June 26, 2006 (the Agreement);
>
> The article at issue in this matter is 21.10(b) which was added to the Agreement of the parties on April 2, 2001.
>
> Overtime is managed by correctional managers through the use of the Scheduling and Deployment System (SDS) which was implemented on September 28, 2009. The availability for officers to select various shifts/hours when updating their overtime availability was introduced with the implementation of SDS version 1.1 released December 20, 2009.

All the following events occur on February 12, 2010, unless otherwise stated and all times are Eastern time.

The grievor was working the evening shift from 14.00h to 23.00h in the maximum security unit. On that same day, another CX-02 officer informed the employer at 17.02h that he could not work his shift scheduled that day from 18.45h to 07.00h the next morning in the maximum security unit of the same penitentiary;

At 17.33h the grievor made himself available for overtime using the SDS in order to replace the previously noted CX-02 who had informed the employer of his not being available to work;

The first 4.25 hours of the position (18.45h – 23.00h) was filled with the evening roll call, and overtime was required from 23.00h to 07.00h the next morning;

At 18.45h the Correctional Manager hired an officer at the CX-01 level for the overtime work from 23.00h to 07.00h.

It is acknowledged by the employer that the Correctional Manager should not have hired a CX-01 into a CX-02 position when a CX-02, such as the grievor in this instance, was readily available and qualified for the overtime work;

The grievor ended the 2009-2010 fiscal year with 41 hours of overtime offered, 1.25 hours of overtime ordered, and worked 32.25 hours of overtime total;

Amongst the 30 other CX-02 officers at the Saskatchewan Penitentiary Maximum, the grievor ranks slightly above average for overtime hours offered and ordered and for the percentage of overtime hours offered.

From February 13, 2010, to the end of the fiscal year March 31, 2010, the grievor made himself available for only one additional overtime shift on March 21, 2010, and no CX-02 overtime was scheduled on that date;

This grievance was presented to the employer on February 17, 2010, and later after being heard a first, second and final time internally, was referred to this Board for adjudication on June 11, 2010;

The grievance and corrective action were denied at the final level on June 28, 2010, and

The dispute between the parties concerns the interpretation of section 21.10(b) of the Agreement.

[9] As just noted, the collective agreement was between the Treasury Board and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN for the Correctional Services Group bargaining agent (signed on June 26, 2006; "the collective agreement"). Clause 21.10 states as follows:

> ***21.10 Assignment of Overtime Work***
>
> *The Employer shall make every reasonable effort:*
>
> *(a) to allocate overtime work on an equitable basis among readily available qualified employees,*
>
> ****
>
> *(b) to allocate overtime work to employees at the same group and level as the position to be filled, i.e.: Correctional Officer 1 (CX-1) to Correctional Officer 1 (CX-1), Correctional Officer 2 (CX-2) to Correctional Officer 2 (CX-2) etc.;*
>
> *However, it is possible for a Local Union to agree in writing with the Institutional Warden on another method to allocate overtime.*
>
> *and*
>
> *(c) to give employees who are required to work overtime adequate advance notice of this requirement.*

[10] Clause 21.12 of the collective agreement, titled "Overtime Compensation", states as follows: "… an employee is entitled to time and one-half (1 1/2) compensation for each hour of overtime worked by the employee."

III. Analysis

A. The issue

[11] The grievor submits that the Board should find that the employer violated the collective agreement as it cannot be exonerated from its obligations under clause 21.10(b) to assign overtime at the same group and level by simply respecting clause 21.10(a), which is on the equitable distribution of overtime.

[12] The grievor further submits that clauses 21.10(a), (b), and (c) create three distinct and independent obligations on the employer, each of equal value, and that the employer must respect them all.

[13] The grievor also states that given the employer's admission that it erred in assigning overtime on the day in question, it should carry the burden of proof of showing that the ensuing situation was an exception to clause 21.10(b). He states that the employer's error resulted in him losing an opportunity to work an eight-hour shift, which must be rectified.

[14] Finally, the grievor states that the employer's claims are absurd that clause 20.10(a) supersedes clause 21.10(b) and that the latter does not have to be complied with or is entirely nullified as long as the obligation in clause 21.10(a) is met.

[15] The employer admits that it made an error by hiring a CX-1 for a CX-2 overtime position when there was a CX-2 employee, such as the grievor in this instance, who was readily available and qualified for the overtime work.

[16] While the employer concedes that clause 21.10(b) was violated in principle, it contests the grievor's requested corrective action of payment for the eight hours that he suggests he is owed. Rather, the employer submits that if the grievance is allowed, a declaration that that clause was violated should be the only corrective action granted.

[17] The employer submits that clause 21.10(b) does not create a standalone entitlement to any particular overtime shift and that the grievor is not entitled to any monetary compensation for the shift in question.

[18] The employer states that it has the opportunity within a fiscal year to correct mistakes made in its obligation to hire at rank by ensuring an overall equitable distribution of overtime to each employee. It suggests that the grievor's position would amount to a standard of perfection being placed upon the hiring of overtime, which would be contrary to the collective agreement since it requires the employer to "make every reasonable effort" to achieve equity and hire overtime within rank.

[19] The employer also noted that the grievor's submission, which is that he is owed financial compensation for any error arising from clause 21.10, would fail to take into account other variables impacting his eventual compensation from overtime, including his availability and the amount of overtime required and offered.

1. Clause 21.10

[20] In support of his "absurd result" argument, the grievor states that taken to its logical extreme, the employer's position, in which it is allowed flexibility in making assignments so that it can later show equitable results, could allow it to deny all CX-2 employees overtime. It could instead assign every overtime opportunity to CX-1 employees or exempt managers and then state that it met the requirements of clause 20.10 because every CX-2 received an equal outcome of zero overtime, thus rendering clause 20.10(b) pointless and futile.

[21] While that example of logical extrapolation paints an exceedingly grim picture of overtime for officers classified CX-2 subject to the employer's interpretation of clause 21.10, it is irrelevant, given that in the facts before me, the grievor, a CX-2, received overtime and finished the fiscal year with a slightly above-average allocation of overtime.

[22] The grievor also notes the fact that clause 21.10 uses the conjunctive "and" to join clauses (b) and (c). He suggests that this conjunctive word was used to show the parties' intention to enumerate the employer's several obligations with respect to overtime. He then cites several other collective agreement articles that also use conjunctive words to connect duties that he submits are all clearly required, on their own, and that this same interpretation should remain consistent through the entire collective agreement, including clause 21.10.

[23] The employer submits that when read as a whole, clause 21.10 provides for a system of allocating overtime that is based upon fairness to the parties. It adds that reading clause 21.10(b) as a standalone and independent obligation, as the grievor suggested, would ignore the context of the whole of clause 21.10. Such an interpretation would unreasonably prioritize the obligation of assigning overtime at rank over the obligation of assigning it equitably.

[24] The employer also submits that the grievor's suggested method of interpreting the clause in question is overly rigid and literal and that it ignores the general purpose of the overtime allocation scheme. Rather, the employer submits that I should take a purposive approach, which it submits is the modern approach to interpreting statutes and collective agreements.

[25] In support of the submission that the text must be read in the context of the overall scheme of allocating overtime, the employer notes the long evolution of this matter between the parties. In March 1999, they agreed to the wording in clause 21.10 dealing with the equitable allocation of overtime and the need for adequate advance notice. Then in April 2001, wording was added to address allocating overtime at the same group and level.

2. Scholarly sources

[26] Both parties quote extensively from scholarly sources to provide support for maxims of interpretation.

[27] Given the extensive jurisprudence on this matter of assignment of overtime, I don't find these sources to be either persuasive or helpful.

3. Jurisprudence

[28] The employer cites the Federal Court decision in *Canada (Attorney General) v. Bucholtz*, 2011 FC 1259 at para. 52, where the Court considered the matter of assigning overtime. The Court agreed with the employer's submission and concluded that: "[e]quitability must be measured over a reasonable period of time …"

[29] In the same paragraph, the Court then enumerates the key aspects of what is considered when allocating overtime as had arisen in previous Board decisions on the same issue that:

> *[52] … It would be wrong to think that article 15 of the collective agreement requires the employer to assign overtime equitably on a daily basis. On the contrary, it is perfectly acceptable in this situation to examine the assigning of overtime by the employer during a reasonable period:* Bérubé … [*v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-22187 (19930215), [1993] C.P.S.S.R.B. No. 34 (QL)].
>
> *Equitability cannot be determined on a day-by-day basis but only over an extended period of time:* Lay … [*v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-14889 (19861124), [1986] C.P.S.S.R.B. No. 301 (QL)].
>
> *I would suggest that matters such as the equitable assignment of overtime cannot be properly assessed by taking a "snap-shot" of one relatively brief period of time… :* Evans v Treasury Board (Solicitor General Canada -

> Correctional Service), *PSSRB File No 166-2-17195 (19881007).*
>
> …
>
> *… However, the issue here is not whether the employer called [the employee] on the days in question, but rather whether it allocated overtime work on an equitable basis. Past decisions have established that this is a factual question and adjudicators have answered this question by considering the amount of overtime worked by each employee over a reasonable period of time:* Charlebois v Treasury Board (Department of Veterans Affairs), *[1992] CPSSRB No 43.*
>
> [Emphasis in the original]

[30] In rebuttal, the grievor strongly argues that *Bucholtz* is irrelevant as it is not concerned with interpreting clause 21.10(b), which the parties agree is the subject of the grievance before me.

[31] The grievor cites *DHL Express (Canada) Ltd. v. Canada Auto Workers, Locals 4215, 144 and 4278* (2004), 124 L.A.C. (4th) 271 at 295, which concluded as follows:

> *… The predominant reference point for an arbitrator must be the language in the Agreement … because it is primarily from the written word that the common intention of the parties is to be ascertained. Language is to be construed in accordance with its ordinary and plain meaning, unless adopting this approach would lead to an absurdity or repugnancy, but in these latter situations, arbitrators will interpret the words used in a manner so as to avoid such results….*

[32] Specifically to the interpretation of clause 21.10, the grievor cites *McManaman v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 75, as authority for his submission that he is owed financial compensation for erroneously being denied one overtime shift. That case considered three overtime shifts that arose on one day (January 4, 2011), which Mr. McManaman alleged he was denied, in breach of the same collective agreement clause, 21.10, as is at issue in the matter before me.

[33] The grievor in the matter before me specifically points to the following lengthy paragraph, 26, of *McManaman*:

> ***26*** *Considering the wording of the collective agreement, I find that the employer can assign a CX-02 to fill a CX-01 position on overtime in one of two circumstances: first, it has already made every reasonable effort to fill the position by*

> *calling on CX-01's who have indicated their availability to work overtime but finds that they are in fact not readily available, or, second, by proving that all CX-01's who have indicated their availability were not "qualified" to occupy the position during the particular shift due to specific factors in the nature of the work that they will be required to perform. I was provided with no evidence from the employer to the effect that it had made any effort to contact CX-01's for the shift in question and in fact, the evidence demonstrated that, from the outset, the employer considered them all to be unqualified for the post being offered and so only made the overtime offer to PB. That being the case, I also find that the employer provided no specific evidence to demonstrate that its evaluation of the skills required that evening was sufficient to rebut the grievor's evidence to the effect that he was qualified to perform the overtime in the CX-01 position. The grievor has proven that he was readily available and that the overtime offered was at his group and level. It was for the employer to then discharge its burden by mounting sufficient evidence to prove that this situation was an exception to clause 21.10 in that the grievor was not qualified for the overtime being offered. The employer has failed to do so to my satisfaction.*
>
> [*Sic* throughout]

[34] In that case, an adjudicator then considered a second day (January 7, 2011). He also found that Mr. McManaman was denied overtime, in contravention of the collective agreement, and then, he provided a detailed analysis of the jurisprudence related to determining the equitable sharing of overtime on only the second day (January 7). The adjudicator then reached a conclusion, with no analysis or detail other than that Mr. McManaman asked for financial compensation of two shifts of eight hours each, totalling 16.25 hours at double time (see paragraph 38). However, at paragraph 14, the adjudicator noted that Mr. McManaman requested 16 hours at double time as a financial remedy.

[35] On judicial review in *Canada (Attorney General) v. McManaman*, 2013 FC 1064, the Federal Court struck down that decision.

[36] In *Mcmanaman v. Canada (Attorney General)*, 2015 FCA 136, the Federal Court of Appeal considered the case and found that the Federal Court had erred by making a determination on a key issue that is relevant to the present case. The Court of Appeal reversed the Federal Court's decision and returned the matter to the adjudicator, with instructions. It stated as follows at paragraphs 2 and 6 through 11:

> *[2] The judge applied the reasonableness standard and concluded that the adjudicator's decision was unreasonable because, after referring to the test set out in* Canada (Attorney General) v. Bucholtz*, 2011 FC 1259 [*Bucholtz*], for determining whether the employer had allocated available overtime work on an equitable basis, the adjudicator allegedly did not apply that test in its entirety. According to the judge, the adjudicator, on the one hand, did not consider the fiscal year as a whole and, on the other, compared the appellant's situation solely with that of an employee who actually worked the overtime hours on January 7, 2011, but was clearly not in a similar situation. According to the judge, in the light of the test that the adjudicator had identified (paragraphs 29 to 33 of his reasons, 2012 PSLRB 75), he should have compared the appellant's situation with those of other similarly situated employees over the course of the year.*
>
> …
>
> *[6] The parties agree that the adjudicator described the proper test and that this test necessarily involves the comparative analysis described in* Bucholtz*. Therefore, the only real issue before us is whether, using the approach set out in* Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, particularly at paragraphs 14 and 15, the Court can in this case infer from the outcome that the adjudicator implicitly concluded as the appellant suggests, and this assumes that the evidence in the record was sufficient for him to do so.*
>
> *[7] The parties have made some rather detailed arguments regarding the evidence in the record. However, they do not agree on which employees had to be taken into account in this case, or on the details that the adjudicator needed to make the comparison described in* Bucholtz*.*
>
> *[8] In the absence of any guidance on this subject, be it in the adjudicator's decision or in arbitral case law, I cannot conclude whether the decision is reasonable without defining the phrase "similarly situated employees" and determining the relevant factors for comparison. The deference owed to the adjudicator suggests that the Court should not substitute its own judgment for that of the adjudicator to define these concepts, which are at the core of the PSLRB's expertise.*
>
> *[9] I also agree with the appellant that the judge erred in substituting his own interpretation of "similarly situated employees" and rendering the decision that the adjudicator should have rendered. It appears that he took the liberty of doing this because, in his view, there was little chance that*

> *the facts in this case would reoccur, given the amendments made to the collective agreement.*
>
> *[10] However, the parties before the Court agree that the issue at stake—namely, which employees are similarly situated and must be taken into account, and what evidence does an adjudicator need to conduct the analysis set out in* Bucholtz*—is important because it is relevant in this respect to a number of grievances that are still pending.*
>
> *[11] I therefore conclude that it would be more appropriate to refer the matter back to the adjudicator to decide this issue with regard to the grievance concerning January 7, 2011. I therefore propose that the appeal be allowed and that, rendering the decision that the judge should have made, the application for judicial review be allowed and the matter referred back to the adjudicator to decide the grievance concerning the allocation of overtime on January 7, 2011, in accordance with these reasons, without costs.*

[37] The grievor submits that *McManaman* treats clauses 21.10(a) and (b) as separate and distinct and as each being enforceable, which should persuade me to accept the same submission on the facts in the matter before me.

[38] Given that the crux of the matter before me is that the employer is required to make every reasonable effort to achieve equity both in overtime and in assigning it within a given grade, I make an important note of the fact that inference (as the Federal Court of Appeal also noted) is required to deduce the basis upon which the adjudicator in *McManaman* came to find that the grievor was owed eight-hour shifts for both January 4 and 7. As the grievor in the matter before me correctly notes, the Federal Court's decision clearly states that the employer sought judicial review only of the grievance award arising from January 7.

[39] Given what I have outlined earlier in this decision, it becomes clearly apparent that the adjudicator in *McManaman* was moved, in his award of financial compensation for both days, by the fact he cited earlier in his decision, which was that despite Mr. McManaman being available for 120 hours of overtime, he had been assigned 0 hours of it in the entire fiscal year (paragraph 11).

[40] What I have just determined, along with the determinations of the adjudicator, the Federal Court, and the Federal Court of Appeal in *McManaman* (all cited with approval in the Federal Court's decision in *Bucholtz*), leads me to conclude that in fact the January 4 grievance in *McManaman* was upheld with financial compensation based

upon the facts that the grievor in that case was denied an overtime shift opportunity and that he had not been treated equitably with respect to his share of overtime as measured over a reasonable period.

[41] Nothing in the cases I noted that arose from the *McManaman* grievance suggests that the grievor is owed financial damages arising solely from the fact that he was denied one shift.

[42] I distinguish *McManaman* on its facts as in stark contrast to it, the facts before me show that Mr. McGaghey received a slightly above-average allocation of overtime during the fiscal year in question. Mr. McManaman had received no overtime at all and had then been denied a shift that the adjudicator found should have been offered to him.

[43] The grievor also cites *Lemoire v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 45 at para. 63, as authority for clauses 21.10(a) and (b) being separate and distinct requirements on the employer when assigning overtime. In that case, the Board considered the issue of the equitable distribution of overtime as set out in clause 21.10(a). It found no evidence supporting the grievance on that ground. Then, under a separate subheading, it began an analysis of the allegation in the grievance under clause 21.10(b) and stated as follows:

> ***63*** *The collective agreement stated that the employer had to make every reasonable effort to allocate overtime work to employees at the same group and level as the position to be filled. That requirement was separate and distinct from the obligation to allocate overtime equitably.*

[44] After considering the evidence on this latter aspect of the grievance before it, the Board found that the employer had made errors in logging the shifts alleged to have been improperly assigned and concluded that there was insufficient evidence upon which to allow the grievance (see paragraphs 67 to 69).

[45] While I accept that the grievor in the matter before me correctly points out that *Lemoire* supports the assertion that clauses 21.10(a) and (b) can be analyzed independently for breaches of the collective agreement, *Lemoire* did not result in the grievance being allowed. Therefore, it provides no guidance on determining and calculating financial compensation or on whether Ms. Lemoire was at, below, or above the average in terms of receiving overtime assignments over the course of the

fiscal year in question, which is the issue before me.

[46] The grievor also relies upon *Baldasaro and Thiessen v. Treasury Board (Correctional Service of Canada)*, 2012 PSLRB 54 at paras. 60 and 61, in which an adjudicator pronounced as follows on "[t]he appropriate remedies for violations of the equitability principle", as that section of the decision is titled:

> ***60*** *Considering that grievances are very rarely heard at adjudication in the same fiscal year in which they are filed, and considering the jurisprudence, the proper remedy for an adjudicator is to order the employer to pay a grievor who proves an inequitable distribution of overtime….*
>
> ***61*** *However, in cases in which adjustments can still be made to the overtime allocation of a fiscal year, the employer, within the internal grievance procedure, could offer alternate overtime shifts to compensate for an inequitable distribution of overtime. When the grievance reaches adjudication, it is too late for that solution, and a cash payment becomes the proper remedy.*
>
> [Emphasis added]

The grievor emphasizes that underlined wording and states that the missed opportunity he suffered should trigger a cash payment as compensation.

[47] As it notes in its submission on this point, the employer states that in the facts before me, the grievor was made whole by being offered overtime after he was erroneously denied the one eight-hour shift. The end of that fiscal year showed that he had been assigned slightly above-average overtime.

[48] In support of its submission on this point, the employer points to the outcome of several cases, of which *Baldasaro and Thiessen* is most similar to the facts before me. In it, the adjudicator concluded that despite the fact that Ms. Thiessen was available for 143 hours of overtime in the fiscal year at issue, she was assigned 0 hours, and that the deciding factor in dismissing her grievance was that after the error that caused her to miss an opportunity, she was subsequently offered two overtime shifts. Ms. Thiessen was not able to accept either shift, but the adjudicator found that by offering them to her, the employer in that case made every reasonable effort to equitably allocate overtime to her (see paragraph 65).

[49] In applying the deciding factors from *Baldasaro and Thiessen* to the facts before me, I reach the same conclusion; namely, the grievor received a slightly above-average share of overtime (among the 30 other CX-2 officers at the Saskatchewan Penitentiary, he ranked slightly above average for overtime offered and ordered and for the percentage of overtime offered). Therefore, despite the error of assigning the shift to an officer below his rank, the evidence does not show that he lost any of his equitable share of overtime as is a required part of clause 20.10(a).

[50] Rather, the employer not only allocated a slightly above-average share of overtime to the grievor, it also offered him another shift after the error was discovered, which he declined as he was unavailable.

IV. Conclusion

[51] The employer has admitted it erred and did not comply with clause 21.10(b) in failing to allocate the shift as issue to the grievor. However, the evidence before me does not establish on a balance of probabilities that the grievor suffered any financial loss and this grievance is, therefore, denied for the reasons set out earlier.

[52] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

V. Order

[53] The grievance is dismissed.

June, 2018.

Bryan R. Gray,
a panel of the Federal Public Sector
Labour Relations and Employment Board