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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

ROBERT BORGEDAHL

Grievor

and

TREASURY BOARD
(Correctional Service of Canada)

Employer

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

In the matter of an individual grievance referred to adjudication

Before: Augustus Richardson, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Hosneara Begum Thibodeau“, Union of Canadian Correctional Officers -Syndicat des agents correctionnels du Canada – CSN

For the Employer: Philippe Giguère, counsel

Decided on the basis of written submissions filed December 20, 2019, and January 10 and 21, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] Robert Borgedahl ("the grievor") challenged the decision of the Correctional Service of Canada ("the employer") to deny paying him call-back pay. The grievor stated that he became entitled to call-back pay when he took two short calls from the employer about work-related matters while at home. The employer denied any such entitlement on several grounds, including that call-back pay is payable only when an employee is required to return to his or her workplace after having left it for the day.

[2] The grievor referred his grievance to adjudication on August 5, 2015.

[3] 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 Public Service Labour Relations and Employment Board and the titles of the *Public Service Labour Relations and Employment Board Act* and the *Public Service Labour Relations Act* to, respectively, the Federal Public Sector Labour Relations and Employment Board, the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act* (*FPSLRA*).

[4] For the purposes of this adjudication, the grievor was covered by the collective agreement that expired on May 31, 2018 for the Correctional Services Group bargaining unit ("the collective agreement"), which had been concluded by the employer and the Union of Canadian Correctional Officers - Syndicat des agents correctionnels du Canada - CSN ("the bargaining agent").

II. Agreed statement of facts

[5] The parties agreed to proceed by way of written submissions based on an agreed statement of facts. I will now set out the statement in its entirety (subject only to changes in the numbering).

[6] The grievor is employed by the employer as a correctional officer, classified CX-2, at the Bowden Institution near Innisfail and Bowden, Alberta, in its Security Operations section.

[7] On March 31, 2015, the grievor completed his work at the Visitor Security Post for the day and left Bowden Institution at the end of his shift. He never returned to Bowden Institution that day.

[8] The same day, while at home between 21:30 and 22:00, he received two brief work-related telephone calls on his personal telephone. They were about a missing visitor tag and a driver's licence that had been left at the front desk of the Visitor Security Post, where he had worked from 7:00 to 15:30.

[9] The first telephone call was from Phil Brochu, who identified himself as calling from the "correctional manager's office", and the second was from Kevin Machan. Both calls were brief; combined, they lasted no more than a few minutes.

[10] On April 13, 2015, the grievor filed a grievance, which read as follows:

> *On 2015/03/31 I received 2 telephone calls at home from the Correctional Manager's office between the hours of 2130 and 2200 regarding a work related matter (my shift that date was 0700hrs to 1530hrs). Since this was a work related matter I believe that I should be entitled to call-back pay. The institution will not pay 3 hours of overtime for these two telephone calls to my home.*

[11] In his grievance, he requested the following corrective action: "To be paid 3 hours overtime for these telephone calls."

[12] The employer denied the grievance at all levels of the internal grievance procedure.

[13] The grievance was referred to adjudication on August 5, 2015.

[14] The grievor was covered by the collective agreement. Article 24 discusses call-back pay, and clauses 21.12 and 21.13 discuss overtime compensation. Those provisions read as follows:

> ***Article 21: hours of work and overtime***
>
> …
>
> ***21.12 Overtime compensation***
>
> *An employee is entitled to time and three-quarters (1 3/4) compensation subject to clause 21.13 for each hour of overtime worked by the employee.*

For greater certainty, any reference to compensation for each hour of overtime worked elsewhere in this collective agreement is at time and three-quarters (1 3/4).

21.13 *An employee is entitled to overtime compensation for each completed fifteen (15) minute period of overtime worked by him or her.*

…

Article 24: call-back pay

Effective January 1, 2014, all references and entitlements related to designated paid holidays no longer apply to employees working shifts in accordance with clause 21.02 of this agreement.

24.01 *If an employee is called back to work:*

a) on a designated paid holiday which is not the employee's scheduled day of work,

or

b) on the employee's day of rest,

or

c) after the employee has completed his or her work for the day and has left his or her place of work, and returns to work, the employee shall be paid the greater of:

i) compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back to a maximum of eight (8) hours' compensation in an eight (8) hour period. Such maximum shall include any reporting pay pursuant to clause 22.03 of this collective agreement;

or

ii) compensation at the applicable rate of overtime compensation for time worked,

provided that the period worked by the employee is not contiguous to the employee's normal hours of work.

d) The minimum payment referred to in subparagraph 24.01(c)(i) above, does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 35.11 of this collective agreement.

24.02 *Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than the employee's normal place of work, time spent by the employee reporting to work or returning to his or her residence shall not constitute time worked.*

…

[15] Were the grievor awarded 3 hours of overtime compensation under article 24, he would be entitled to approximately $190.98, gross.

III. Submissions

A. For the grievor

[16] The grievor submitted that clause 24.01(c) is triggered when an employee does the following:

1) completes his or her normal day or shift of work;
2) leaves his or her workplace; and
3) is required by the employer to perform work.

[17] The grievor submitted that the third condition does not require the employee to perform the additional work at the workplace. The phrase, "returns to work", means, in effect, "enters or returns to a state of performing work". It is not a requirement that the work in question be performed at the workplace. The work contemplated by the phrase could be performed anywhere. All that matters is that an employee who has left work is then required by the employer to perform some work on what would otherwise be personal time.

[18] The grievor submitted that had the collective agreement intended the phrase "returns to work", as used in clause 24.01(c), to mean a required return to the workplace, it would have said so. The collective agreement could have said "return to the workplace", as, for example, in *OPSEU v. Ontario (Ministry of Government Services)*, 2011 CarswellOnt 7120. But it did not. That being the case, an employee can be considered as having made a "return to work" regardless of whether the work was performed at the employer's premises or at the employee's home; see *Markham Stouffville Hospital v. CUPE, Local 3651*, 2007 CarswellOnt 8024 at para. 31.

[19] The grievor added that the intent of call-back pay is to compensate an employee for the disruption to personal time. It is not to compensate for travel time; see *OPSEU v. Northeast Mental Health Centre*, 2004 CarswellOnt 9815. In this case, the grievor had left work. He was at home. His personal time was interrupted, disrupted, and taken over by his employer's two calls, however brief, about work matters. By taking and answering the calls, he made a "return to work" and so was entitled to call-back pay under clause 24.01(c).

[20] Accordingly, the grievor sought the following:

1) a declaration that clause 24.01(c) did not require an employee to be physically at the workplace to receive call-back pay; and
2) an order that the employer pay the grievor $190.98 in call-back pay, in accordance with the collective agreement.

B. For the employer

[21] In his lengthy written submissions, the employer argued the following, in essence:

1) in interpreting clause 24.04(c), I ought to take account of both the wording of the collective agreement as a whole and the particular nature of a correctional officer's work;
2) the burden of proof to establish a breach of the collective agreement was on the grievor;
3) the ordinary meaning of "call-back" requires an employee to return to a workplace;
4) in this case, the grievor did not return to the workplace and so is not entitled to call-back pay;
5) the French version of clause 24.04(c) supports the employer's position;
6) had the collective agreement intended to extend clause 24.04 to work performed at home, it would have said so;
7) the wording of similar provisions in other collective agreements in the federal public sector supported the employer's submission that had the collective agreement intended call-back pay to apply to work performed at home, it would have said so;
8) the nature of correctional officers' work is such that it can be performed only at the workplace, and hence, taking two brief calls at home was not work within the meaning of clause 24.04;
9) the two calls were so brief that they did not even trigger the overtime provisions of clause 21.12 (on overtime compensation);
10) the purpose of the call-back pay provisions is to compensate employees for the added aggravation and disruption to their personal lives caused by having to make an extra trip to and from work, which did not happen in this case;
11) the evidence did not establish a significant disruption to the grievor's personal time;
12) the grievor's argument is an attempt to have me rewrite or amend the collective agreement, which I cannot do; and
13) the grievor's position would be impractical to apply and would lead to absurd results.

C. The grievor's reply

[22] The grievor repeated his central argument that the phrase "return to work" is much broader than "return to the workplace". While the latter wording requires the employee to physically return to the workplace, the former does not: "In the absence of language in the collective agreement that would require attendance at work, call-back pay should be understood as compensation for the disruption to one's own time and nothing else"; see *Northeast Mental Health Centre*, at para. 49.

[23] The grievor submitted that the employer's position at paragraph 8 of its reply submissions would result in it being able to "… make use of its employees for work-related matters without compensation after they left the work place [*sic*]". That position is unsustainable, unjust, and unfair. He added that work performed from home is still work. Many people work at home even with a workplace outside the home.

[24] The grievor also objected to the employer's suggestion that somehow, as a correctional officer, his position differed from that of a regular public servant.

[25] The grievor disagreed with the employer's submission that the French version of clause 24.01(c) supports a requirement that the employee actually return to the workplace. He argued that the French version has the same three requirements as the English version, as follows:

> 1) … *avoir terminé son travail de la journée et*
> 2) *avoir* ***quitté les lieux de travail,*** *et*
> 3) ***rentre au travail*** *….*
> [Emphasis added]

[26] He submitted that the French version clearly distinguishes between returning to the workplace (*lieux de travail*) and returning to work (*rentre au travail*). He added that the word *rentrer* alone does not specify a location. It means, "returning to whatever you were doing before". Hence, *rentre au travail* means "return to work" and not "return to the workplace".

[27] The grievor then submitted that the employer's argument was wrong that receiving two brief phone calls was not work. The grievor answered the phone and replied to the employer's questions about a work-related matter. Under any definition, it was work. Had the collective agreement intended otherwise, it would have specified that to be entitled to call-back pay, an employee would have to return to the workplace. But that is not what the collective agreement means.

[28] Finally, the grievor objected to the employer's reliance upon what was said or agreed to in other collective agreements with different bargaining agents. The grievor's bargaining agent did not bargain those other agreements. The collective agreement that applies in the case is determinative, not the wording of other collective agreements between other employers and bargaining agents.

IV. Analysis and decision

[29] The central task when interpreting a collective agreement provision is to determine its intent as revealed in the words used in it. One interprets the provision within the context of the agreement as a whole, gives its words their ordinary meanings (unless it would result in an absurdity or the agreement gives them a special meaning), and considers the circumstances known to the employer and the bargaining agent at the time they entered into the agreement. In addition, and within the context of agreements subject to the *Act*, the Board's decision "… may not have the effect of requiring the amendment of a collective agreement or an arbitral award"; see s. 229. See also *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 46 to 48.

[30] With these observations in mind, but before considering the parties' submissions, I will set out the collective agreement provisions that I believe will help in the interpretation of clause 24.01(c).

A. Relevant provisions of the collective agreement

[31] Clause 2.01(n) defines "overtime" as follows:

> …
>
> i. *in the case of a full-time employee, authorized work in excess of the employee's scheduled hours of work;*
>
> *or*
>
> ii. *in the case of a part-time employee, authorized work in excess of the normal daily or weekly hours of work of a full-time employee specified by this collective agreement but does not include time worked on a holiday.…*

[32] "Shift" is defined in clause 2.01(p) as "… the employee's regularly scheduled continuous hours of work, not to the post to which the employee is assigned …".

[33] Part 3 (articles 21 to 35) of the collective agreement deals with working conditions. Several provisions deal with the organization and compensation of different types of work.

[34] Clause 21 deals with hours of work and overtime. Clause 21.01 provides as follows that when hours of work "… are scheduled for employees on a regular basis, they shall be scheduled so that employees"

> *a. on a weekly basis, work forty (40) hours and five (5) days per week, and obtain two (2) consecutive days of rest,*
>
> *b. on a daily basis, work eight (8) hours per day.*

[35] Shift schedules are to be posted at least 28 days in advance under clause 21.03(a). When shifts are scheduled on a rotating or irregular basis, they must be scheduled so that an employee works as follows (clause 21.02(a)):

> …
>
> *i. over the length of the shift schedule, works an average of forty (40) hours per week,*
>
> *and*
>
> *ii. on a daily basis, works eight decimal five (8.5) hours per day.*

[36] Clause 21.10 deals with assigning overtime. It requires the employer, among other things, to make "… every reasonable effort … to give employees who are required to work overtime adequate advance notice of this requirement" under clause 21.01(c). Overtime is paid at the rate of 1¾ time under clause 21.11 for each 15-minute "period of overtime worked by" the employee; see clause 21.13.

[37] Clause 21.16 ("Emergency situation") provides for compensation at the overtime rate when an employee, in "the case of an emergency", has to work between the end of his or her regularly scheduled shift and the start of his or her next regularly scheduled shift.

[38] Clause 22.01 (in the reporting pay section) provides that an employee who reports for work for his or her scheduled shift shall be paid either the hours actually worked or a minimum of four hours of regular (straight-time) compensation, whichever is greater. Clause 22.02 provides that "[t]ime spent by the employee reporting to work or returning to his or her residence shall not constitute time worked." Clause 22.03 adds the following:

> ***22.03*** *Payments provided under Call-Back and Reporting Pay shall not be pyramided, that is, an employee shall not receive more than one compensation for the same service.*
>
> [Emphasis in the original]

[39] This leads to clause 24 (on call-back pay), which, for convenience, I have replicated in full as follows:

> …

> ***24.01*** *If an employee is called back to work:*
>
> *a. on a designated paid holiday which is not the employee's scheduled day of work,*
>
> *or*
>
> *b. on the employee's day of rest,*
>
> *or*
>
> *c. after the employee has completed his or her work for the day and has left his or her place of work, and returns to work, the employee shall be paid the greater of:*
>
> *i. compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each call-back to a maximum of eight (8) hours' compensation in an eight (8) hour period. Such maximum shall include any reporting pay pursuant to clause 22.03 of this collective agreement;*
>
> *or*
>
> *ii. compensation at the applicable rate of overtime compensation for time worked,*
>
> *provided that the period worked by the employee is not contiguous to the employee's normal hours of work.*
>
> *d. The minimum payment referred to in subparagraph 24.01(c)(i) above, does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 35.11 of this collective agreement.*
>
> ***24.02*** *Other than when required by the Employer to use a vehicle of the Employer for transportation to a work location other than the employee's normal place of work, time spent by the employee reporting to work or returning to his or her residence shall not constitute time worked.*
>
> ***No pyramiding of payments***
>
> ***24.03*** *Payments provided under the overtime, reporting pay, designated paid holiday and standby provisions of this collective agreement and clause 24.01 above shall not be pyramided, that is, an employee shall not receive more than one compensation for the same service.*
>
> …
>
> [Emphasis in the original]

[40] I note that there are no standby provisions in the collective agreement.

B. Interpretation

[41] The central issue concerns the meaning of "returns to work" in clause 24.01(c). The grievor's position is that it means an employee's return "to being in a state of work" or "to working" — that is, to performing a service or task for the employer. It does not matter where that service or task is performed. All that matters is that it be performed after the employee has left his or her workplace.

[42] The employer's position, on the other hand, is that "returns to work" means "returns to the workplace". Clause 24.01(c) is triggered only when the employee has to return physically to the workplace.

[43] This disagreement as to the meaning of the phrase "returns to work" arose in part because the phrase, standing on its own and without the benefit of context, is ambiguous. For example, say an employee is on a coffee break and states, "I must return to work." Since the employee is already at his or her workplace, the phrase would be interpreted to mean, "return to working". On the other hand, if that same employee is at home and says that he or she "must return to work", then ordinarily, it would be understood to mean that he or she has to "return to the workplace".

[44] The phrase's apparent ambiguity stems from the overlapping but distinct meanings of "work", which can be either a verb or a noun, Its meanings include both the performance of a service for compensation and the place at which that service is carried out. Some sample dictionary meanings are as follows:

> [From Merriam-Webster.com:]
>
> *… activity in which one exerts strength or faculties to do or perform something …*
>
> …
>
> *… one's place of employment ….*
>
> …
>
> [From Dictionary.com:]
>
> *… employment, as in some form of industry, especially as a means of earning one's livelihood …*
>
> …
>
> *… one's place of employment ….*
>
> [From Dictionary.Cambridge.Org:]

> *… an activity, such as a job, that a person uses physical or mental effort to do, usually for money …*
>
> *…*
>
> *… a place where a person goes specially to do their job ….*

[45] The grievor, in pressing his case that "returns to work" in the context of a call-back pay provision means simply the return to the performance of a service, emphasized what he stated is the rationale underlying call-back pay. He stated that call-back pay is intended to compensate employees solely for the disruption to their personal lives caused by being required to perform additional work after they have returned home. The grievor's argument would result in call-back pay not being intended to compensate for any travel time back to the workplace that might be required, particularly now, when technological advances make it possible in some cases to perform the work in question without actually returning to the workplace.

[46] The grievor leaned heavily on a line of arbitral authorities that appear to support his position that the rationale for call-back pay has nothing to do with any requirement for a physical return to work. I have in mind the awards in *Northeast Mental Health Centre* and *Markham Stouffville Hospital*.

[47] *Northeast Mental Health Centre* was about employees who worked in two teams and who dealt with clients who had chronic or serious mental illnesses. During their regular shifts, they took calls and offered support to their clients. On weekends, one member from each team was required to be on standby from home and received standby pay for it. When on standby, an employee could receive calls from clients and offer support. The work was exactly what he or she did during normal weekday working hours. When it was performed, it was paid as overtime. On occasion, employees on standby would also be required to attend somewhere outside their homes to respond to calls. On those occasions, they received a minimum of two hours of call-back pay, rather than standby pay.

[48] The bargaining agent in that case grieved the employer's refusal to pay call-back pay rates to employees who took calls while on standby that did not require leaving their homes. An arbitration board canvassed the arbitral jurisprudence on call-in or call-back pay and its rationale. The review, at paragraphs 20 to 45, is instructive. It summarized the jurisprudence at paragraph 46 as follows:

> ***46*** *From* [*International Molders & Allied Workers' Union, Local 49 v. Webster Manufacturing (London) Ltd.* (1971), 23 L.A.C. 37; "*Webster*"] *onwards, the earliest authorities seem to indicate that the original purposes behind call back pay were threefold— (1) to provide compensation for the disruption to one's personal life, (2) for the physical inconvenience of having to make and [sic] extra and unplanned trip to and from the workplace and (3) to create a disincentive for the employer so as to ensure that call back was not abused.*

[49] However, the arbitration board went on to note that in its view "… there has been a recognition that the second purpose (if it exists at all) has become increasingly less relevant where modern technology has permitted a significant blurring of the lines between work and private life" (at paragraph 47). Hence, there had been "… a steady march away from the early Webster analysis", such that the "… vast majority of arbitrators now understand the general purpose behind call back to be compensation for disruption to one's personal life and nothing more" (at paragraph 48). As a result, the arbitration board concluded that "[i]n the absence of language in the collective agreement that would require attendance at work, call back pay should be understood as compensation for the disruption of one's own time and nothing else" (at paragraph 49). I note, however, that the arbitration board did find words to the contrary in the collective agreement in that case and that it ended up dismissing the grievance.

[50] *Markham Stouffville Hospital* was about maintenance employees whose regular duties included controlling and adjusting the environmental systems and sensors of the employer (a hospital). The collective agreement provided for overtime pay, reporting pay, standby pay, and call-back pay. Employees on standby, which required them to be available for duty outside normal working hours, were entitled to standby pay. Employees "… called back to work after having completed a regular shift …" were to receive a minimum of four hours of pay at time-and-a-half. Standby pay would cease when an employee was called into work under the call-back provision.

[51] There was no maintenance person on site at the hospital during the night. A maintenance employee would be put on standby to deal with any problems that arose during the night. The employer's environmental system could be controlled remotely through a laptop. Maintenance employees on standby were provided with a laptop. From time to time, they would be called at night about a problem that they could fix remotely, without leaving home, via the laptop. When such calls came in, the employer

said that the employees should be paid at the overtime rate. The bargaining agent said that they should be paid under the call-back provisions.

[52] The arbitration board was of the view that there was no ambiguity in the call-back provision. It noted as follows at paragraph 20, in line with the analysis in *Northeast Mental Health Centre*:

> *20 Technological changes increasingly allow for employees to perform their work equally well remotely. When working on the employer's business at their houses during their off time, employees are no less recalled to work than if they are required to physically attend at work … although the physical disruption will obviously be less.…*

[53] It went on to explain as follows at paragraph 22:

> *22 … the key difference between the overtime and the call-back provisions is the guarantee of four hours pay for the call-back work. Why is there the guarantee? The rationale for having a call-back premium has been explained as compensation for the significant disruption of being required to work during one's off hours, and to discourage employers from making unnecessary and too frequent use of its employees when they are not scheduled to work.*

[54] The arbitration board added at paragraph 23 that in its view, the approach in *Webster*, "… which included reference to the disruption of leaving home and physically coming into work …", had been "… steadily eroded in subsequent arbitral jurisprudence." In the end, at paragraph 30, it followed the line mapped out in *Northeast Mental Health Centre* and concluded that absent express wording requiring physical attendance at the workplace, being "called back to work" or "called into work" could mean either "… being physically called back and into the work location, but … includes being called back temporally [*sic*], being required to get back 'into work,' to resume work for the Employer."

[55] In the end, I was not convinced that the need for a trip back to the workplace is no longer a constituent element of call-back pay in the collective agreement before me. There are several reasons for my skepticism.

[56] First, the term "call-back" is not a term of art. It has well-recognized meanings outside the specific terms and conditions of collective agreements. Here are some examples:

> [From Dictionary.com (as "callback"):]
>
> *… an act of calling back.*
>
> *… a summoning of workers back to work after a layoff.*
>
> *… a summoning of an employee back to work after working hours, as for emergency business.*
>
> *… a request to a performer who has auditioned for a role, booking, or the like to return for another audition.*
>
> [From Merriam-Webster.com (also as "callback"):]
>
> …
>
> *… a public call by a manufacturer for the return of a product that may be defective or contaminated …*
>
> *… a recall of an employee to work after a layoff*
>
> *… a second or additional audition for a theatrical part ….*
>
> [From *The Canadian Oxford Dictionary* (1998) (also as "callback"):]
>
> *… an instance of calling back; e.g. by a salesperson or service person, or for a job interview or theatrical audition.*

[57] Those common uses of "call-back" suggest a meaning that includes a return or travelling **back** to an original starting point; that is, **a return** to a place from which one has departed. Indeed, this commonplace meaning of the term has been recognized within the labour relations context since at least the 1984 publication *Labour Law Terms - A Dictionary of Canadian Labour Law*, by Sack and Poskanzer, which states the following:

> *"Call-back pay" – extra compensation, frequently at premium rates, payable to employees required to report to work after completion of scheduled working hours; the collective agreement may guarantee employees a minimum number of hours.*

[58] That being the case, it is not clear to me why one should assume that when a collective agreement uses a term that historically (that is, before advances in technology) had as one of its requirements an extra trip to and from the workplace, it should be given a broader meaning instead, one that removes that requirement, without being more explicit about the abandonment of that requirement. Nor do the arbitral awards relied upon by the grievor, such as *Northeast Mental Health Centre* and *Markham Stouffville Hospital*, explain why one should ignore the historical meaning in preference to a broader one.

[59] Second, I am concerned that the arbitration boards in those awards were filling gaps in the agreements before them that ought to have been filled at the bargaining

table instead. Take the example in *Markham Stouffville Hospital*. The call-back provision provided for a minimum of four hours' pay at time-and-a-half. The work in question could be performed in "a very short period of time [*sic*]." Before the "technological changes" referenced in that decision, an employee had to return to the hospital at night to make the necessary changes to the environmental system. From the standpoints of both the employer and the bargaining agent in that case, an agreement to compensate such an employee at that time for a minimum four hours would seem reasonable because it more fairly represented the burden being placed on the employee than would have been the case if the extra work had been treated as simply overtime.

[60] However, once technological change does away with the need on an employee's part to travel new questions arise as to when and how an employer can interrupt the employee's personal time---and how the employee's time should be compensated. Should the time spent working be considered overtime? Or was it still call-back time even though a physical trip was no longer necessary? Many collective agreements — including, I might add, the one before me — contain technological change provisions precisely because they recognized the need to permit renegotiation during the life of the agreement to deal with such changes to the nature of work. That being the case, arbitrators and adjudicators ought to be slow to rush in to fill gaps that might have opened up in a collective agreement because of technological changes.

[61] Third, arguing that the rationale for call-back pay is rooted solely in the disruption it causes to an employee's personal life overlooks the fact that work can impose different types and degrees of disruption. It also ignores the fact that over many decades, employers and bargaining agents have developed different types of compensation to reflect those differences in type and degree of disruption to an employee's personal life.

[62] So, for example, overtime, regardless of whether it is voluntary or mandatory, constitutes an imposition on an employee's personal life. Any work done in excess of an employee's normal hours of work means an absolute reduction in the personal time that would otherwise be available to the employee. It also often requires changes to the schedules, obligations, and pleasures of the employee's personal life. This is particularly true since many employees have spouses who also work. It is in

recognition of that serious imposition on the personal lives of employees that ordinarily, overtime is paid at a significant premium.

[63] Standby is equally an imposition, although of a different type. Employees on standby may never actually have to perform work. But they must stand ready to be available if they are called upon to perform work. That need means that they must remain close to home and not consume substances, whether alcohol or recreational drugs, that may impair their ability to perform work. So while they may never have to work while on standby, and while the personal time available to them may not be reduced or limited as with overtime, it remains true that their lives are impacted. Hence the premium for being on standby, although it is generally at a rate less than overtime.

[64] Finally there is the situation of an employee who has gone home for the day and received a call asking him or her to return to the work site because the employer needs him or her to perform some work. The imposition is twofold. First, the employee loses personal time. Second, he or she must travel to work and then back again. In normal course, travelling to and from work for one's regular shift is not compensated. But in the case of a call-back, an employee might lose time travelling back and forth to and from work in addition to the time that is necessary to perform whatever work is required. Hence the common difference in the compensation between standby and call-back; see *Gasbarro v. Treasury Board (Canadian Transportation Accident Investigation and Safety Board)*, 2007 PSLRB 87 at para. 98. In such a case, the imposition on an employee's personal life is closer to overtime than to standby. That employee suffers a reduction in personal time that is composed of having to work as well as having to travel to and return from the workplace. The latter means that limiting the employee to overtime would not fairly represent the cost to and imposition on the employee's personal life. Hence, most if not all call-back provisions in collective agreements provide for a minimum number of hours pay, regardless of how many are actually worked.

[65] The point is that each of these well-known situations and corresponding pay rates exists because the parties have recognized that the demands of work infringe on the personal lives of employees in different ways and to different degrees. There is no one-size-fits-all compensation rate. The rates differ because the nature of the infringement is different. Saying as does the grievor that call back pay is meant to

compensate for the sole disruption of one's own time overlooks the fact that many of the different types of pay rates can be understood in the same way. The trick — and the collective agreement's clear intent — is to compensate the different types of imposition in ways that reflect the nature and type of the imposition. It is not to reduce them all to the same thing.

[66] All this is to say that I am inclined to the view that call-back pay provisions have been intended historically to refer to a situation in which an employee has to return to the workplace to perform some extra service at the employer's request. The exact scope of the entitlement — and the circumstances under which it might be triggered — will be spelled out in the agreement. But absent anything to the contrary, the assumption is that the interference in an employee's personal life that call-back pay is intended to compensate includes the need to travel from the employee's home to the workplace.

[67] In any event, I note that the arbitral authorities referenced by the grievor and the employer all agree that the words of the agreement govern. With that in mind, I now turn to the interpretation of the wording of the collective agreement before me and of clause 24.01(c) in particular. And having considered that clause in the context of the collective agreement as a whole, and in particular within the context of Part 3, my opinion is that the collective agreement uses "returns to work" to mean, "returns to the workplace", rather than "returns to the status of performing work". I say this for two reasons.

[68] First is the collective agreement's use of the term "call-back". As I noted, the common meaning associated with it historically incorporates travel from one place back to another.

[69] Second, clause 24.01(c) is triggered "… after the employee has completed his or her work for the day and has left his or her place of work, and returns to work …". The phrase "returns to work" appears immediately after "… has left his or her place of work …", which is clearly focused on the **place** of work, not the performance of work. Given that the words "returns to work" follow immediately after the phrase "place of work", one would expect the same meaning to be intended. Moreover, had the collective agreement intended "returns to work" to mean "returns to the performance of work" it would, at least in the context of the phrasing of clause 24.04(c), have used

the word “working” rather than “work”. In other words, had they used the phrase “returns to **working**”, there would have been no doubt as to the collective agreement’s intention.

[70] Accordingly, I am satisfied that the phrase “returns to work” that the collective agreement used in clause 24.01(c) means “returns to the workplace”. An employee who performs work after leaving for the day is not entitled to call-back pay under that clause if he or she did not have to travel back to the workplace to do it.

[71] Separate and independent of my conclusion as to the meaning of clause 24.01(c) is the question of whether the grievor did in fact perform work when he answered the employer’s two calls on March 31, 2015. The onus of proof in this case was with the grievor. The agreed statement of facts states that the calls “… were related to work matters … concerning a missing visitor tag and a driver’s licence that had been left at the front desk of the Visitor Security Post, where the Grievor had worked from 7:00 to 15:30.” There was no evidence as to whether the calls required that the grievor perform any work for the employer. There was no evidence as to whether the calls related to something that **the grievor** should have done while he was at work or whether they related to something someone else did or did not do during that time. If the calls related to the former, I would have some difficulty understanding why an employee should be compensated for doing something **after** he or she left work that should have been done **while at** work. In any event, it is not necessary for me to decide this point.

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

(The Order appears on the next page)

V. Order

[73] The grievance is dismissed.

March 31, 2020.

Augustus Richardson,
a panel of the
Federal Public Sector
Labour Relations and Employment Board