Date: 20201023

File: 566-02-38258

Citation: 2020 FPSLREB 93

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

AMANDA TURCOTTE

Grievor

and

TREASURY BOARD
(Department of Employment and Social Development)

Employer

Indexed as
Turcotte v. Treasury Board (Department of Employment and Social Development)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Kim Patenaude, counsel

For the Employer: Marie-France Boyer, counsel

Heard at Ottawa, Ontario (via videoconference),
September 1 and 2, 2020.

REASONS FOR DECISION

I. Individual grievance referred to adjudication

[1] In 2016, Amanda Turcotte ("the grievor") was employed as a business expertise advisor (BEA) with Employment and Social Development Canada (the employer).

[2] Clause 28.04 of the collective agreement in place at the time reads, in part, as follows: "Subject to operational requirements, the Employer shall make every reasonable effort to avoid excessive overtime and to offer overtime work on an equitable basis among readily available qualified employees."

[3] In the late summer of 2016, the grievor became aware of overtime opportunities that had been offered to her colleagues but not to her. On October 4, 2016, she submitted a grievance, stating: "I grieve the fact that the employer failed to provide fair and equitable distribution of overtime since August 29, 2016, to a qualified employee." She alleged a violation of clause 28.04(a) of the collective agreement.

[4] The employer denied her grievance on the basis that she was not qualified to perform the work for which the overtime had been approved.

[5] 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 Board"), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

[6] This matter was scheduled to be heard in Sudbury, Ontario. Due to the COVID-19 pandemic, it was heard instead via videoconference on September 1 and 2, 2020.

[7] For the following reasons, the grievance is denied. I find that the grievor was not qualified to perform the work that had to be performed during overtime.

II. Summary of the evidence

[8] The parties jointly submitted a book of documents along with an agreed statement of facts, which reads as follows:

> *1.* [The grievor] *has been an employee of the Federal Public Service since 2006. During the period of time relevant to this grievance,* [the grievor] *was employed at Employment and Social Development Canada as a Business Expertise Advisor (BEA). This position is classified at the PM-03 group and level. The Work Description for this position is at* ***Tab 15*** *of the Book of Documents.*
>
> *2.* [The grievor] *worked on one of two Training, Advice and Guidance (TAG) teams in the Payment and Processing Services Branch, Employment Insurance Division (PPSB-EI). (PPSE-EI was subsequently renamed the Benefits Delivery Services Branch - Employment Insurance Division (BDSB-EI))*
>
> *3. The TAG teams consisted of approximately 20 BEAs led by a Business Expertise Manager.* [The grievor]*'s manager at the time was Susan Park.*
>
> *4.* [The grievor] *was the main BEA who supported the Regional Enquiry Unit (REU). The REU handles all ministerial enquiries as well as all enquiries from Members of Parliament in Ontario.*
>
> *5.* [The grievor]*'s TAG team held meetings chaired by Ms. Park. On June 30, 2016, Lorraine Nicol, Acting Senior Business Expertise Advisor and manager of the* [Individual Quality Feedback] *IQF team, attended the bi-weekly TAG team call. Minutes of the June 30, 2016 TAG team meeting are at* ***Tab 7*** *of the Book of Documents.*
>
> *6. On August 29, 2016,* [the grievor] *emailed Ms. Nicol to volunteer to work IQF overtime. Ms. Nicol responded on the same day. A copy of this email is at* ***Tab 8*** *of the Book of Documents.*
>
> *7. BEAs who submitted a canvass were approved to work a maximum of 7.5 hours of overtime (OT) from Monday August 29 to Friday September 2, 2016. Production on OT was for IQF activities only. The email dated August 26, 2016 to employees who submitted a canvass is at* ***Tab 9*** *of the Book of Documents.*
>
> *8. On September 2, 2016 an email was sent to TAG team members and IQF team members advising that, despite not having canvassed, overtime was approved to a maximum of 7.5 hours of OT for September 6-9 2016 for the following activities: Responding to A & G* [advice and guidance] *enquiries, IQF (Lorraine's team and those doing specialized IQF items).* [The grievor] *worked OT on A & G enquiries from September 6-9, 2016. The email dated September 2, 2016 is at* ***Tab 10*** *of the Book of Documents.*

> *9. BEAs who submitted a canvass were approved to work a maximum of 7.5 hours of OT from September 12 to September 16, 2016. Production on OT was for IQF activities only. The email dated September 9, 2016 to employees who submitted a canvass is at **Tab 11** of the Book of Documents.*
>
> *10. BEAs who submitted a canvass were approved to work a maximum of 7.5 hours of OT from September 19 to September 23, 2016. Production on OT was for IQF activities only. The email dated September 16, 2016 to employees who submitted a canvass is at **Tab 12** of the Book of Documents.*
>
> *11. BEAs who submitted a canvass were approved to work a maximum of 7.5 hours of OT from September 26 to September 30, 2016. Production on OT was for IQF activities only. The email dated September 9, 2016 to employees who submitted a canvass is at **Tab 13** of the Book of Documents.*
>
> *12. On September 29, 2019 [sic, should be 2016], employees who submitted a canvass were advised that there was no overtime approval for the week of October 3, 2016 to October 7, 2016 as IQF monitoring was up to date and OT in general had been cut back for the month. The email dated September 29, 2019 [sic, should be 2016] is at **Tab 14** of the Book of Documents.*
>
> *13. On October 4, 2016,* [the grievor] *filed this grievance:*
>
> > *Grievance Details:*
> >
> > *I grieve the fact that the employer failed to provide fair and equitable distribution of overtime since August 29, 2016 to a qualified employee.*
> >
> > *Corrective action requested:*
> >
> > *Compensation of all missed overtime and any other action to make me whole.*
>
> *The Grievance Form dated October 4, 2016 is at **Tab 1** of the Book of Documents*
>
> *14. Ms. Park responded to the grievance at the 1st level. The first level grievance response dated November 8, 2016 is at **Tab 2** of the Book of Documents.*
>
> *15. The second level response dated September 12, 2017 is at **Tab 3** of the Book of Documents.*
>
> *16. The final level response dated March 8, 2018 is at **Tab 4** of the Book of Documents.*
>
> [Emphasis in the original]

[9] The grievor testified to her experience and expertise and to her responsibilities on the Training, Advice and Guidance (TAG) team. When on January 12, 2016, her new manager, Susan Park, requested information on her BEA proficiencies, the grievor responded:

…

> *I am proficient in all level 1 phases with the exception of Tier 2 CC* [call centre]. *Similarly I am proficient in all phases of level 2 with the exception of Post Audit and Appeals.*
>
> *I have self-studied on those topics I am not proficient at, however [sic] have not been formally trained in them.*

…

[10] The grievor described Level 1 as having five phases pertaining to the fundamentals of processing Employment Insurance (EI) claims. A BEA usually spends six months to one year at Level 1, depending on operational requirements. The one area of specialization associated with Level 1 is Tier 2 CC (Call Centre) Processing.

[11] Level 2 has three phases. It pertains to the processing of more complex EI claims. In her email, Ms. Park indicated the three areas of specialization associated with Level 2 as Post Audit, Formal Reconsideration, and Appeal Preparation.

[12] The grievor testified to her elevated level of responsibility in responding to requests for information from ministers, deputy ministers, and members of Parliament. Often, she would be obliged to respond to inquiries immediately, with little to no preparation time. She testified to a thorough knowledge of the Acts and regulations pertaining to EI claims and to her ability to respond quickly and accurately to such information requests, whenever they arose.

[13] The grievor was responsible for monitoring the work of two other TAG team agents. She reviewed drafts of their work to ensure accuracy and compliance with the applicable Acts and regulations.

[14] On a spreadsheet prepared by management, the grievor was recognized as being able to work without the additional support of a "monitoring buddy". Her specialization in working with EI claims involving bankruptcy was also recognized.

[15] Lorraine Nicol testified to being a manager of an IQF team. The acronym "IQF" stands for "Individual Quality Feedback", and it pertains to the systemic, organization-wide review of the quality of work performed by individual agents tasked with processing EI claims.

[16] In June of 2016, Ms. Nicol attended a meeting of the TAG teams to bring attention to a challenge facing the IQF teams. The work being carried out by IQF

personnel had changed drastically in April of 2016, with the implementation of a new, unique, and specific program designed to help the IQF teams monitor and provide feedback to individual agents processing EI claims. The program, or perhaps more specifically, the platform upon which the program was based, was not working as well as had been anticipated. For a variety of related reasons, the IQF teams found themselves facing a considerable backlog of work. Ms. Nicol attended the TAG meeting to advise the team members of the need for someone to switch from a TAG team to an IQF team to help address the backlog. The grievor did not volunteer to switch.

[17] Ms. Nicol testified to being very specific about the nature of her solicitation at the June meeting — she was looking for a TAG team member to volunteer to jump to an IQF team. No mention was made at the meeting of any overtime being made available to address the IQF backlog. Ms. Nicol testified to eventually receiving one volunteer, but she also testified to the need, later in the summer, to approach management for permission to allocate some overtime in order to address the backlog.

[18] The grievor testified to being known in the office as someone who never hesitated to work available overtime. In late August of 2016, a colleague asked her why she was not working the overtime that had been approved for a certain IQF project (for the backlog); she testified that she was not aware of the existence of the project or of the fact that anyone was working overtime in relation to it.

[19] Ms. Nicol testified that the project required immediate and urgent attention because the information it was designed to capture was essential to completing the mid-year assessments of the agents processing EI claims. The mid-year assessments were due at the end of September, and it was already late August.

[20] The overtime in question was worked during the period encompassed by this grievance, namely, August and September of 2016. Three of the grievor's colleagues worked the overtime. According to the employer's two witnesses, those colleagues were qualified to perform the overtime work, while the grievor was not, which is why she was not canvassed for the work in question.

[21] Those witnesses, as well as the grievor, confirmed that she was never trained on the template used for the overtime work at issue. That work involved the use of this particular template. Therefore, testified Ms. Nicol, the grievor had not been included in the solicitations of interest for the overtime.

[22] Ms. Nicol testified to knowing that the people she canvassed were qualified to work with the template in question and that her canvassing was limited by that very strict criterion.

[23] The grievor testified to her conviction that she was capable and qualified to carry out the work being performed during the overtime hours allotted to helping with the IQF backlog. She saw the main issue as entering information into a template. She was familiar with the work of the IQF teams, and although she had never been trained on the specific template, she felt that the work was well within her sphere of competence.

[24] To support her conviction, the grievor produced an email dated June 7, 2019, which was about the use of an "IQF tool". It read as follows:

> …
>
> *Further to Lorraine* [Nicol]*'s conference call yesterday I am attaching the IQF tool*
>
> *The actual monitoring of the claims is no different than any other type of monitoring however the tool is quite different. It shouldn't take more than about 20 minutes for you to see how the tool works and how to complete the work items in the tool.*
>
> *Let me know when you have a spare ½ hour and we can either screen share or you can come to my desk to see how it is done.*
>
> …

[25] Thus, testified the grievor, it was obvious that her skill set would have qualified her to work the overtime in August and September of 2016.

[26] Ms. Park had been the grievor's supervisor since January of 2016. She was aware of some of the grievor's specializations and was most certainly aware of her work ethic and her value as an employee, but she was unaware of any specialization the grievor might have possessed that would have made her a suitable candidate for the work that Ms. Nicol needed done.

[27] Ms. Nicol did not feel that the grievor possessed the specialized skills necessary for the IQF work that she needed done in very short order. According to Ms. Nicol, the template used in August and September of 2016 had been put together specifically to address the shortcomings of a problematic IQF platform, which had been in use as of April of 2016.

[28] The shortcomings of the April 2016 platform were the direct cause of the IQF backlog, and a makeshift template was pressed into service in the late summer of 2016 to try to address the backlog. The backlog had to be addressed immediately, so that performance assessments could be completed in September of 2016.

[29] Sometime after this grievance was filed, the original platform was redesigned and reissued, and according to Ms. Nicol, the second version corrected the earlier deficiencies and worked perfectly. Therefore, the IQF tool referred to in the June 7, 2019, email, which was to be used alongside the new and improved version, was significantly different from the template used in August and September 2016. Ms. Nicol stated that the email the grievor presented in evidence cannot be read in the context of the problems faced in late summer 2016.

[30] Ms. Nicol testified that in August and September of 2016, she knew exactly what had to be done. She sought and received management's approval to allocate a certain amount of overtime hours for a very specific purpose pertaining to the IQF backlog. She also testified to knowing exactly who was capable of doing the work. She did not canvass everyone on the TAG teams, only those who she knew possessed the qualifications necessary to get the job done. The grievor was not one of them.

[31] Ms. Nicol was asked why she did not canvass the grievor. She replied that it would have been counterproductive because the grievor would have required a certain amount of very specific training on how to use the template, while on overtime. Ms. Nicol would have had to place the grievor alongside a qualified employee to deal with issues that the grievor would not have been able to handle on her own. According to Ms. Nicol, doing so would have defeated the purpose of allocating overtime to address the problem.

III. Summary of the grievor's arguments and submissions

[32] The grievor maintained that she was qualified to perform the work. She was skilled in training and in post-training monitoring, and the basis of the IQF teams' work was the same. The employer's witnesses did not deny that only minimal training would have been required to perform the overtime work at issue.

[33] The grievor submitted case law supporting the proposition that to be qualified, one does not need special knowledge. *Casper v. Treasury Board (Department of*

Citizenship and Immigration), 2011 PSLRB 27, concerned the denial of an overtime opportunity to a qualified employee. In that case, an employee became aware of an overtime opportunity that had been offered to a different work team. The adjudicator wrote the following at paragraph 16:

> *16 I find the evidence confirms that, on a balance of probabilities, the grievor was qualified to do the overtime work of processing white mail. He had done the work before. I did not find any special or unique aspects of the overtime work or required skills that would preclude other employees from outside Team J from doing the work. Similarly, the evidence about the training program did not demonstrate a requirement for special or unique skills or knowledge about processing white mail that could be acquired only by taking the training. I find it more likely that an employee with long service and varied work experience like the grievor's would know how the employer processes white mail.*

[34] The grievor argued that to exclude certain employees from overtime for which they are eligible, the collective agreement would have to be more specific. The case of *Dewit v. Canada Revenue Agency*, 2016 PSLREB 40 at paras. 73 and 78, is arguably on point with the present circumstances, as follows:

> ***73*** *Qualifications are one of the criteria used when determining the equitable distribution of overtime. If I am to accept the employer's argument, the grievors were not qualified to work overtime in the Accounts Receivable section. They challenged the employer's change in 2010 with Mr. Harder's arrival, which was that they were no longer qualified to work overtime in the Accounts Receivable section, where it was available. While the employer denied that there had been such a change, it provided no evidence to support their contention. In the absence of this evidence, I accept the grievors' claims that with the arrival of Mr. Harder the method of distributing overtime changed. Unlike in* Brisebois*, this is not a case of grievors of different classification levels seeking overtime at another level.*
>
> …
>
> ***78*** *In my opinion, for the employer to be successful in this interpretation, the collective agreement must specify that to be qualified to work overtime, the employee must be currently assigned to the unit where the overtime is available, either directly or by interpretation. The current language does not make overtime distribution subject to any such restriction, and nowhere could I find a provision that would lend itself to the employer's interpretation that overtime should have been distributed in the fashion adopted by Mr. Harder in 2010 without an amendment to the language of the collective agreement, which I am prohibited from doing by section 229 of the* Act.

[35] The grievor also submitted *Rushwan v. Treasury Board (Department of Transport)*, 2020 FPSLREB 66, which involved standby pay rather than overtime. In that case, even though the grievor in question had not yet qualified, he was still capable of performing the work because he was a master mariner, yet he was not placed on the standby list. That decision states as follows at paragraph 183:

> *[183] I accept that the grievor was available but not yet qualified to conduct cargo inspections at the time he made his request. His certificate did not yet indicate that he was mandated to inspect cargo ships. But this fact is not enough to decide the issue. The requirement is that the employer "will endeavour" to provide for an equitable distribution of standby duties.*

[36] In *Rushwan*, which, as the grievor in this case acknowledged, is under judicial review, the Board member allowed the grievance and ordered compensation for the period during which the grievor in that case did not receive the opportunity to be on standby.

[37] The grievor pointed out the similarity to her situation in that she met the criterion required to work the overtime; she was ready and available, but she was not even canvassed. She was never provided the opportunity to work the overtime.

[38] The grievor submitted that *Public Service Alliance of Canada v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 11 ("*PSAC v. TB*"), is exactly on point with the present circumstances. The employer's procedure in canvassing for overtime must be considered. In this case, the canvassing process was sorely lacking because Ms. Nicol did not provide everyone with the opportunity to work the overtime; she limited her canvassing to a select group.

[39] Thus, argued the grievor, clause 28.04(a) of the collective agreement was violated.

IV. Summary of the employer's arguments and submissions

[40] The employer maintained that by her own admission, the grievor lacked the objective qualifications necessary for Ms. Nicol to include her in the group to which the overtime was offered. Furthermore, even had the grievor been able to demonstrate that she was qualified, she did not demonstrate that the overtime was distributed unequally or unfairly.

[41] The grievor had never been a member or performed the work of an IQF team. She was amply qualified for the TAG teams' work, but the evidence clearly indicated that she was never trained in the work required of an IQF team member.

[42] The employer argued that the training for the work is an irrelevant consideration because there is no obligation under clause 28.04(a) to train an employee to carry out work offered on overtime. The analysis of the grievance must be limited to its terms. It was not filed over the employer's failure to train the grievor or to canvass her. In her grievance, as well as in her testimony, the grievor stated she was qualified, but the employer maintained that she failed to prove this.

[43] The grievor bears the burden of proof of establishing a claim of an inequitable distribution of overtime, per *Doherty v. Treasury Board (Department of National Defence)*, 2014 PSLRB 77 at para. 33, which states as follows: "The onus of establishing that the claim of inequitable distribution should stand lies with the grievors; in this case, meeting the onus depends on the testimony of a single grievor …."

[44] The analysis of overtime distribution, when equitability is concerned, must be done over a reasonable period. The case of *Public Service Alliance of Canada v. Treasury Board (Department of National Defence)*, 2015 PSLREB 40 at para. 64, suggests one fiscal year. The period of time is only several weeks in this case, which makes it impossible to measure whether the overtime was distributed inequitably.

[45] In this matter, evidence was submitted in the form of a spreadsheet showing the total hours of overtime worked over a one-year period. Comparing the overtime hours allocated to the grievor to those allocated to others similarly situated, she had the fifth-highest total overtime hours worked, which cannot be argued as an inequitable distribution.

[46] The employer argued that the crux of the matter was the set of operational requirements that Ms. Nicol's team faced in late summer 2016. The IQF teams were tasked with compiling data to assist in completing the mid-year assessments for the agents processing EI claims. They were due at the end of September, and with that deadline rapidly approaching, the IQF teams faced a backlog. Additional resources were required. Ms. Nicol obtained the services of an additional team member, but it was still not enough to get the job done by the deadline, so she went to management, seeking authorization for overtime.

[47] Purely for the sake of efficiency, Ms. Nicol sought the assistance of only those individuals she knew possessed the qualifications to get the job done quickly. She did not approach the grievor because she knew that the grievor lacked the necessary qualifications. Bringing the grievor in on overtime would not have been efficient because Ms. Nicol would have had to place her alongside a person with the necessary qualifications. Paying two to do the work of one, on overtime, negates the purpose of the overtime.

[48] The case of *Canada (Attorney General) v. Bucholtz*, [2011] F.C.J. No. 1548 (QL) at para. 63, speaks as follows to the employer's ability to exercise its discretion to maximize efficiency:

> ***63*** *The Court also notes that equity cuts both ways -- the employer is entitled to implement a scheme for allocating overtime that is fair to the employees and fair to the employer in terms of its interests in maximizing efficiency and minimizing cost. The Labour Board has consistently found that the employer is permitted to consider these factors when allocating overtime. If the consideration of cost is not itself prohibited, and there is no evidence that the resulting allocation is inequitable, then there is no violation of the collective agreement.*

[49] The employer distinguished the cases that the grievor cited on the basis that they did not apply to the present case. It argued that in *Dewit* and *Casper*, the situation was completely different because the grievors in those cases had previously carried out exactly the same work and were in fact qualified to do the work for which the overtime was offered. In this case, the opposite is true. The grievor was simply not qualified, which is why the overtime was not offered to her.

A. The grievor's rebuttal

[50] In rebuttal, the grievor pointed out that the spreadsheet showing total overtime hours is irrelevant. The total hours over one fiscal year are not at issue. This argument was presented and rejected as follows in *PSAC v. TB*, at para. 52:

> ***52*** *The employer submitted that whether the grievors received their fair share of overtime could be only assessed over the period of a year. Yet, in the same breath, it also submitted that each overtime opportunity was a fresh opportunity. The longstanding [sic] jurisprudence of this Board and its predecessor indicates that indeed, overtime distribution must be calculated over time, and that generally speaking, the period of a year is the period over*

> *which such distribution should be measured. However, this case is not about an inequitable allocation of overtime. As previously mentioned, the employer's procedure was that approved overtime hours were allocated equally among canvassed employees who had indicated their availability. Rather, the inequitableness in this matter resides in the fact that the employer denied the grievors the opportunity to work overtime by excluding them from certain canvasses for Level 2 processing overtime work. In the circumstances of this case, I consider that the failure of the employer to offer overtime work on an equitable basis constituted a violation of clause 28.04(a) of the collective agreement, as the employer failed to offer overtime to employees who were readily available and qualified, without operational requirements to justify its refusal or failure.*

[51] This grievance pertains to one specific allotment of overtime, which the grievor maintained she was qualified to work. The inequity that is the subject of the grievance pertains to her being excluded despite her qualifications.

[52] The context of the employer's process of canvassing for overtime must be examined. The evidence points to the existence of other employees, including the grievor, who were qualified to do the work in question, but the individuals who were considered constituted only a very small and select group. It was not an equitable practice.

V. Reasons

[53] I agree with the grievor that the crux of the matter is not, as the employer has suggested, the total number of hours of overtime she worked, as compared to others similarly situated, over the course of a year. The statistics introduced into evidence were unchallenged and clearly showed that the grievor was fifth highest in terms of the total number of overtime hours worked over a one-year period, which included the time encompassed by this grievance. This is irrelevant to the issues at hand.

[54] At issue are the distribution of overtime within a very narrow window of time and whether the grievor was properly excluded from the select few who were canvassed (and who actually worked) the overtime in question. It all comes down to whether she was qualified to perform the work for which the overtime was offered. I find that on the balance of probabilities, she was not.

[55] After carefully considering *Dewit* and *Casper*, I find that I must agree with the employer and distinguish those cases from the present circumstances. In them, the

employees who had been denied overtime were certainly qualified to carry out the overtime work because they had done it before. This is not the case here.

[56] I must also distinguish *PSAC v. TB* on the basis of the operational requirements that the employer faced. It states as follows at paragraph 50:

> ***50*** *The employer also never adduced evidence that convinced me that operational requirements prevented it from offering the overtime to the grievors. Expressions of interest were generally canvassed well in advance of the overtime opportunity and no issues or arguments were raised that would call into question the ability of the employer to offer the overtime to the grievors as a result of operational requirements….*

[57] That passage describes a set of circumstances completely at odds with this case. Ms. Nicol testified very clearly about the nature of the work for which the narrow window of overtime was required and about those she knew were qualified to perform it. I wholeheartedly support the managerial prerogative to organize work efficiently, especially when overtime is authorized.

[58] In some situations, it might be prudent to bring in employees for overtime who need to be trained in the work that must be performed. Of course, it results in some short-term duplication of effort, but it can be justified on the basis of the longer-term gains to be realized by having additional qualified personnel on hand for future, similar work.

[59] This was not a consideration in August and September of 2016 in the grievor's workplace because Ms. Nicol's needs were immediate and very much for the short term. As a result of some deficiencies with an existing computer program, an immediate need arose to address a backlog of work that had to be done in very short order, namely, by the end of the next month (September), so that the EI processors' mid-year evaluations could be conducted. This is precisely the sort of "operational requirement" contemplated at paragraph 50 of *PSAC v. TB*, cited earlier in this decision.

[60] The work that Ms. Nicol needed done was not the type of work normally performed by BEA team members. The grievor was a member of the BEA team, not the TAG team. The unchallenged evidence of all the witnesses proved that the work was performed on overtime by the three individuals who she knew possessed the

qualifications necessary for the work. Ms. Nicol did not canvass the grievor because she was not qualified to perform the work.

[61] The grievor's value as an employee was never called into question. She is obviously energetic, dedicated, hard-working, and gifted with a set of special skills and qualifications. Quite rightly, her organization values her highly. She was simply not the person the organization needed for that one very specialized job, at that particular time.

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

(The Order appears on the next page)

VI. Order

[63] The grievance is denied.

October 23, 2020.

James R. Knopp,
a panel of the Federal Public Sector
Labour Relations and Employment Board