Date: 20221014

Files: 566-32-42288 to 42290

Citation: **2022 FPSLREB 87**

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

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BETWEEN

ANGELA DUHAMEL

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as
Duhamel v. Canadian Food Inspection Agency

In the matter of individual grievances referred to adjudication

Before: Caroline E. Engmann, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Kourosh Farrokhzad, Public Service Alliance of Canada

For the Employer: Laetitia Bonaparte Auguste, counsel

Heard via videoconference,
February 3 and 22, 2022.
(Written submissions filed March 18 and April 13 and 22, 2022.)

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] There are three grievances before me, all dealing with the interpretation and application of the provisions of two collective agreements between the Public Service Alliance of Canada ("the bargaining agent") and the Canadian Food Inspection Agency ("the employer") on overtime pay, standby pay, and call-back pay (expired on December 31, 2011 ("the 2011 collective agreement"), and December 31, 2014 ("the 2014 collective agreement"); note that "the collective agreement" in the singular is used throughout since the provisions at issue are identical in both agreements). Angela Duhamel ("the grievor") was at all relevant times employed as a multi-program specialist inspector classified at the EG-04 group and level and working out of the employer's Burnaby Regional Office in Burnaby, British Columbia.

[2] The grievance details are as follows:

> Grievance no. 25641, dated July 6, 2011 (Board file no. 566-32-42288):
>
> *I grieve the denial of my call back time as this is against my Collective Agreement* [for calls on May 30 and 31, 2011.]
>
> Grievance no. 26994, dated November 18, 2011 (Board file no. 566-32-42289):
>
> *I greive [sic] the denial of my call back time as this is against my collective agreement* [for calls on June 18, July 2 and 10, and August 27, 2011].
>
> Grievance no. 27454, dated April 10, 2012 (Board file no. 566-32-42290):
>
> *I grieve the denial of pay and expenses incurred which is against my collective agreement* [standby pay, on March 17 and 23, 2012.]

[3] All three grievances were denied at the final level of the internal grievance process and were referred to adjudication. The parties' dispute pertains to the rate of remuneration applicable to the work activities that the grievor carried out on each day at issue.

[4] Although these grievances are not test cases, the employer confirmed that currently, 53 grievances at different levels within the internal grievance process relate to the issues raised in these grievances, along with a related policy grievance.

[5] I find that the core issue in each grievance is not a true matter of the interpretation of the relevant collective agreement provisions; rather, it is a matter of applying those provisions to each event on the dates in question. For the reasons set out in this decision, I render the following disposition for each of the three grievances:

1) Grievance no. 25641, about the call received on May 30, 2011 (Board file no. 566-32-42288), is denied;
2) grievance no. 26994, about the calls received on June 18, July 2 and 10, and August 27, 2011 (Board file no. 566-32-42289), is allowed; and
3) grievance no. 27454, about calls made on March 17 and 23, 2012 (Board file no. 566-32-42290), is denied.

II. Summary of the evidence

A. For the grievor

[6] Ms. Duhamel testified on her own behalf. She commenced her employment with the employer in December 1998 as a primary inspector, classified at the EG-01 group and level. Her current position is an EG-04 multi-program specialist inspector. She works out of the Burnaby Regional Office. During the period relevant to the grievances, she described her daily duties as conducting inspections on marine vessels loading and exporting grain out of the harbour in Vancouver, British Columbia. She also tested grain samples received in the grain laboratory as well as performed audits of grain elevators. She conducted inspections at the international mail centre, and examined parcels for animal and plant health.

[7] Her regular work schedule was from 8:00 a.m. to 4:00 p.m. on weekdays. Ships come in at random times, and so, it often happened that she worked outside regular hours. A standby schedule (also referred to as an on-call schedule) is prepared a year in advance so that the employees are aware of their standby schedules. The parties used the terms “on-call” and “standby” interchangeably. The post-harvest season tends to be very busy, and more calls are received outside regular hours. On weekends and holidays, when ships come in, she would take the phone calls from shipping agents and address their needs or requests. When she was on standby on weekends and holidays, she would either call the main office line to deal with messages or would take phone calls directly from shipping agents.

[8] With respect to ship inspections, the shipping agent would usually call the main office line, and then the employer would direct the request to any available inspector.

She explained that when ships arrived in the evening, the inspectors would have to rearrange their schedules to accommodate conducting inspections.

[9] Before she filed these grievances, if she were called before the start of her regular shift, she would receive standby pay. She explained that from her perspective, the employer asked her to phone in before leaving home to ensure that the inspection was on schedule. This means that the employer asked her to be on standby for a half hour in the morning, for which she was to be compensated under the standby provisions of the collective agreement. She explained that she did not claim standby pay for a phone call but that at the employer's request, she made herself available on standby for any work to be done.

[10] Before 2011, the employer compensated inspectors at the standby rate for such calls. She referred to the employer's guidelines, entitled *Vancouver Harbour Overtime Guidelines Nov 2009* ("the 2009 overtime guidelines"), which provided as follows: "If you work a morning ship, and you call in to check messages, you can claim ½ hour standby before the OT [overtime] starts".

[11] In July 2011, the employer revised those guidelines ("the 2011 overtime guidelines"), as follows:

> *…*
>
> *• There will not normally be OT in the morning due to the new shift schedule.*
>
> *• If you are coming in for OT in the morning for a ship, you should call in prior to leaving to ensure that the ship has not changed time overnight*
>
> *• If this call/s [sic] take longer than 15 min (ie due to changes you have to make multiple calls) then you are compensated for time worked as overtime code 260*
>
> *• If they take less than 15 min, there is no compensation.*
>
> *…*

[12] According to the grievor, the employer changed how things had been done, which she did not agree with.

1. Grievance no. 25641, Board file no. 566-32-42288

[13] On Monday, May 30, 2011, she received a phone call at 7:15 a.m. from a shipping agent. She addressed his concerns. This was before the start of her shift. She claimed one hour of call-back pay.

[14] On Tuesday, May 31, 2011, she received calls from 6:00 p.m. to 6:30 p.m., after her shift had ended and for which time she claimed call-back pay.

[15] She claimed one hour of call-back pay for each call on May 30 and 31, 2011. She was paid at the call-back rate for the May 31, 2011, call, but the employer refused to pay her one hour of call back for the May 30th call. Rather, the employer treated this call as overtime and paid her 15 minutes at the relevant overtime rate.

2. Grievance no. 26994, Board file no. 566-32-42289

[16] This grievance was filed about a series of dates in June, July, and August 2011 for which the grievor claimed call-back pay in respect of work activities she performed on weekends.

[17] The grievor was designated to be on call on June 16 to 19, 21, and 30, 2011. After that, it was July 1 to 13 and 16 and August 22 to 28, 2011.

[18] On Saturday, June 18, 2011, which was the grievor's day of rest, she received a series of telephone calls between 12:04 p.m. and 12:24 p.m. It was one of her designated on-call dates. The employer denied her call-back pay for the calls and paid her 15 minutes (or 0.25 hours) at the weekend overtime rate.

[19] On Saturday, July 2, 2011, which was the grievor's day of rest, she received a series of calls between 12:49 p.m. to 1:20 p.m. It was one of her designated on-call days. The employer denied her call-back pay claim and paid her 30 minutes (or 0.5 hours) at the weekend overtime rate.

[20] On Sunday, July 10, 2011, the grievor received work-related calls from 1:18 p.m. to 1:34 p.m. It was one of her designated on-call days. The employer denied her call-back pay claim and paid her 15 minutes (or 0.25 hours) at the weekend overtime rate for Sundays (double time).

[21] On Saturday, August 27, 2011, the grievor received a series of work-related calls from 12:30 p.m. to 12:56 p.m. It was one of her designated on-call days. The employer denied her call-back pay claim and paid her 15 minutes (or 0.25 hours) at the weekend overtime rate.

3. Grievance no. 27454, Board file no. 566-32-42290

[22] This grievance is about work activities that the grievor carried out in March 2012 and for which she claimed remuneration under the collective agreement standby provision. She testified that the ordinary "standby" hours were from 4:00 p.m. to 10:30 p.m. on weekdays and from 6:30 a.m. to 10:30 p.m. on weekends and holidays.

[23] On Saturday, March 17, 2012, she claimed standby pay for a call she made before the beginning of her shift. The employer rejected her claim, and she received no remuneration for the call because it took less than 15 minutes.

[24] On Friday, March 23, 2012, she claimed standby pay for a call she made before her scheduled shift. The employer rejected the claim, and she received no remuneration for the call because it took less than 15 minutes.

[25] The grievor testified that she had to be available for work before her regularly scheduled workday began. The employer had requested employees to phone in before their shifts, to ensure that the inspections were on schedule. According to her, it meant that she had to make herself available on standby.

[26] She also testified that before July 2011, the employer remunerated early morning calls to check messages at the standby rate of one-half hour.

[27] The grievor testified that the employer expected her to ensure the accuracy of changes to her schedule and that it could be done only by phoning in to ensure that a scheduled ship inspection was on track. She should not have had to use her personal time for that work activity.

B. For the employer

[28] At the relevant times, Raymond Knight was employed as the multi-program supervisor at the employer's Vancouver Harbour Sub-District Office, classified at the EG-05 group and level, and was the grievor's supervisor at the time of the events in question. As the multi-program supervisor, he supervised a team of two EG-04

inspectors (including the grievor) and approximately six multi-program inspectors classified at the EG-03 group and level.

[29] He dealt with administrative things, expense claims, approving overtime, and assigning work. Although he carried out some inspections, his role was mainly staff supervision.

[30] Mr. Knight described the broad range of inspections carried out on both the import and export fronts. Inspectors basically worked as group to get the work done, and the ship inspection duties they performed were the same, regardless of their level. The EG-04 inspectors had additional duties, such as soil laboratory audits, grain sample testing, and other specialized programs due to their higher level of learning. Work was assigned daily to all inspectors. They worked two shifts, 6:30 a.m. to 2:30 p.m., and 8:00 a.m. to 4:00 p.m. Previously, there were three shifts — a third shift was added as a pilot project, which lasted approximately six months, from August 2011 to early 2012, when the late shift was eliminated and the pilot project was ended.

[31] Mr. Knight explained the process for booking vessel inspections in 2011. The shipping agents would send a fax or email to provide an approximate date and time for the inspection. Updates on the vessels' expected times of arrival were provided by phone; the agents would call the main line at the Vancouver harbour office. Inspections were typically carried out between 7:30 a.m. and 8:30 p.m. but could be scheduled or rescheduled outside those core hours. If a vessel was alongside the dock or in Burrard Inlet or if there was a special request, then the inspection could occur at any time.

[32] Once an inspection time has been finalized, it has to be confirmed during regular business hours. The deadline to book an inspection is four hours before the requested inspection time or by 4:00 p.m. on a Friday for a weekend inspection.

[33] Mr. Knight explained the standby system in place at the relevant time. Due to the nature of the operations and the industry's service expectations, all staff were required to be on standby. When a vessel arrived, the sooner its inspection forms and certificate of readiness were ready, the sooner it could get in line for loading. Delays meant additional costs for operators.

[34] The employer has a system in place under which it designates two inspectors to be on standby outside office hours. The standby list is posted in November for the

upcoming year. During the weekday, there are two standby periods, from 4:00 p.m. to 8:00 p.m., and from 8:00 p.m. to 10:30 p.m. On weekends and designated holidays, standby hours are designated in four-hour time blocks between 6:30 a.m. and 11:30 p.m.

[35] Before 2011, inspectors were required to phone into the voicemail system while working on standby, to check for messages. After March 4, 2011, a messaging system was put in place from which inspectors would receive notifications on their employer-issued cell phones that a message had been deposited. Inspectors were not expected to take calls after 10:30 p.m.

[36] With respect to grievance no. 25641, about the May 30 and 31, 2011, calls, he confirmed that the grievor was not entitled to call-back pay for the May 30 call at 7:15 a.m.; rather, she was entitled to be paid under the general overtime clause in the collective agreement. She was paid under the call-back provisions for the May 31 call as it was taken after her regularly scheduled shift and during her designated standby period.

[37] With respect to grievance no. 26994, he testified that all the calls should have been claimed under the general overtime clause in the collective agreement as opposed to the call-back provisions.

[38] With respect to grievance no. 27454, he testified that the grievor was not entitled to standby pay as claimed since she was not on standby when the calls were taken; therefore, the regular overtime clause applied.

III. The relevant collective agreement provisions

[39] I have outlined in this paragraph the relevant collective agreement provisions. Both parties agree that the provisions at issue in both the 2011 and 2014 collective agreements are articles 27 (overtime), 28 (call-back pay), and 29 (standby) and that those provisions remained unchanged between the two. I have reviewed both agreements very closely and I agree, so I have reproduced only those provisions from the 2011 collective agreement, as follows:

Article 2 – Interpretations and definitions	*Article 2 – Interprétation et définitions*

2.01 *For the purpose of this Agreement:*

(i) "double time" means two (2) times the employee's hourly rate of pay; (tarif double)

(n) "hourly rate of pay" means a full-time employee's weekly rate of pay divided by thirty-seven decimal five (37.5); (taux de rémunération horaire)

(r) "overtime" (heures supplémentaires) means:

(i) in the case of a full-time employee, authorized work in excess of the employee's scheduled hours of work;

(u) "straight-time rate" means the employee's hourly rate of pay; (tarif normal)

(v) "time and one-half" means one decimal five (1.5) times the employee's hourly rate of pay; (tarif et demi)

27.01 *Each fifteen (15) minute period of overtime shall be compensated for at the following rates:*

(a). time and one-half (1.5) except as provided for in sub-clause 27.01(b) or (c);

(b). double (2) time for each hour of overtime worked after fifteen (15) hours' work in any twenty-four (24) hour period or after seven decimal five (7.5) hours' work on the employee's first (1st) day of rest, and for all hours worked on the second (2nd) or subsequent day of rest. Second (2nd) or subsequent day of rest means the second (2nd) or subsequent day in an unbroken

2.01 *Aux fins de l'application de la présente convention :*

r) « tarif double » signifie deux (2) fois le taux horaire de rémunération de l'employé-e; (double time)

v) « taux de rémunération horaire » désigne le taux de rémunération hebdomadaire d'un-e employé-e à temps plein divisé par trente-sept et demi (37,5); (hourly rate of pay)

j). heures supplémentaires » (overtime) désigne :

i. dans le cas d'un-e employé-e à temps plein, le travail autorisé qu'il ou elle exécute en plus des heures de travail prévues à son horaire,

t) « tarif normal » désigne le taux de rémunération horaire de l'employé-e; (straight-time rate)

s) « tarif et demi » signifie une fois et demie (1,5) le taux de rémunération horaire de l'employé-e; (time and one-half)

27.01 *Chaque période de quinze (15) minutes de travail supplémentaire est rémunérée aux tarifs suivants :*

a). tarif et demi (1,5), sous réserve des dispositions des alinéas 27.01b) ou c);

b). tarif double (2) pour chaque heure supplémentaire effectuée en sus de quinze (15) heures au cours d'une période donnée de vingt-quatre (24) heures ou en sus de sept heures et demie (7,5) pendant son premier (1er) jour de repos, et pour toutes les heures effectuées pendant le deuxième (2e) jour de repos ou le jour de repos subséquent. L'expression « deuxième (2e) jour de repos ou jour de repos subséquent »

series of consecutive and contiguous calendar days of rest;	*désigne le deuxième (2e) jour ou le jour subséquent d'une série ininterrompue de jours de repos civils consécutifs et accolés.*
28.01 *If an employee is called back to work:*	***28.01*** *Si l'employé-e est rappelé au travail*
(a). on a designated paid holiday which is not the employee's scheduled day of work;	*a). un jour férié désigné payé qui n'est pas un jour de travail prévu à son horaire,*
or	*ou*
(b). on the employee's day of rest;	*b). un jour de repos,*
or	*ou*
(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:	*c). après avoir terminé son travail de la journée et avoir quitté les lieux de travail, et rentre au travail, il ou elle touche le plus élevé des deux montants suivants :*
(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 31.06 and the relevant reporting pay provisions;	*(i). une rémunération équivalant à trois (3) heures de rémunération calculée au tarif des heures supplémentaires applicable pour chaque rappel, jusqu'à concurrence de huit (8) heures de rémunération au cours d'une période de huit (8) heures. Ce maximum doit comprendre toute indemnité de rentrée au travail versée en vertu du paragraphe 31.06 et des dispositions concernant l'indemnité de rentrée au travail,*
or	*ou*
(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.	*(ii). la rémunération calculée au tarif des heures supplémentaires applicable pour les heures de travail effectuées, à la condition que la période travaillée ne soit pas accolée aux heures de travail normales de l'employé-e.*
(d). The minimum payment referred to in 28.01(c)(i) above, does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance	*d). Le paiement minimum mentionné en 28.01(c)(i) ci-dessus ne s'applique pas aux employé-e-s à temps partiel. Les employé-e-s à temps partiel recevront un paiement minimum en*

with clause 60.06 of this collective agreement.

(e). When an employee completes a call-back requirement without leaving the location in which the employee was contacted, the minimum of three (3) hours provided for in sub-clause 28.01(c) shall be replaced by a minimum of one (1) hour which shall apply only once in respect of each eight (8) hour period.

***28.03** Payments provided under the Overtime, Reporting Pay, Designated Paid Holiday and Standby provisions of this collective agreement and clause 28.01 above shall not be pyramided, that is an employee shall not receive more than one compensation for the same service.*

***29.01** Where the Employer requires an employee to be available on standby, without the agreed notice of cancellation, during off-duty hours, such employee shall be compensated at the rate of one-half (0.5) hour for each four (4) hour period or part thereof for which the employee has been designated as being on standby duty.*

***29.02** An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return for work as quickly as possible if called. In designating employees for standby, the Employer will endeavour to provide for the equitable distribution of standby duties.*

vertu du paragraphe 60.06 de la présente convention.

e). Lorsqu'un-e employé-e est rappelé au travail sans qu'il ou elle ait à quitter l'endroit où il ou elle a été rappelé, le minimum de trois (3) heures prévu à l'alinéa 28.01c) est remplacé par un minimum d'une (1) heure qui s'applique une seule fois à l'égard de chaque période de huit (8) heures.

***28.03** Les paiements prévus en vertu des dispositions de la présente convention concernant les heures supplémentaires, l'indemnité de rentrée au travail, les jours désignés payés et l'indemnité de disponibilité, ainsi que le paragraphe 28.01 ci-dessus, ne doivent pas être cumulés, c'est-à-dire que l'employé-e n'a pas droit à plus d'une rémunération pour le même service.*

***29.01** Lorsque l'employeur exige d'un-e employé-e qu'il ou elle soit disponible, en l'absence d'un avis d'annulation accepté, en dehors des heures normales de travail, cet-te employé-e a droit à une indemnité de disponibilité au taux équivalant à une demi-heure (0,5) de travail pour chaque période entière ou partielle de quatre (4) heures durant laquelle il ou elle est en disponibilité.*

***29.02** L'employé-e désigné par une lettre ou un tableau pour remplir des fonctions de disponibilité, doit pouvoir être atteint au cours de cette période à un numéro téléphonique connu et pouvoir rentrer au travail aussi rapidement que possible s'il ou elle est appelé à le faire. Lorsqu'il désigne des employé-e-s pour des périodes de disponibilité, l'Employeur s'efforce de prévoir une répartition équitable des fonctions de disponibilité.*

29.03 *No standby payment shall be granted if an employee is unable to report for work when required.*

29.03 *Il n'est pas versé d'indemnité de disponibilité si l'employé-e est incapable de se présenter au travail lorsqu'il ou elle est tenu de le faire.*

29.04 *When an employee is required to report for work and reports on a day of rest, the employee shall be paid the greater of:*

(a). compensation equivalent to three (3) hours' pay at the applicable overtime rate for each reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period;

or

(b). compensation at the applicable overtime rate for actual overtime worked;

(e). the Employer shall endeavour to make cash payment for overtime by the fourth (4th) week after which the employee submits the request for payment.

29.04 *L'employé-e qui est tenu de se présenter au travail un jour de repos et qui s'y présente touche la plus élevée des deux (2) rémunérations suivantes :*

a). une rémunération équivalant à trois (3) heures de rémunération calculée au tarif des heures supplémentaires applicable pour chaque rentrée au travail, jusqu'à concurrence de huit (8) heures de rémunération au cours d'une période de huit (8) heures,

ou

b). la rémunération calculée au tarif applicable des heures supplémentaires réelles,

e. L'Employeur s'efforce de verser la rémunération en espèces des heures supplémentaires dans les quatre (4) semaines qui suivent la demande de paiement de l'employé-e.

29.06 *Payments provided under the Overtime, Reporting Pay, Designated Paid Holidays and Call-Back provisions of this collective agreement and clause 29.04 above shall not be pyramided, that is, an employee shall not receive more than one compensation for the same service.*

29.06 *Les paiements prévus en vertu des dispositions concernant les heures supplémentaires, les jours fériés désignés payés et l'indemnité de rentrée au travail de la présente convention collective ainsi qu'en vertu du paragraphe 29.04 ci-dessus, ne doivent pas être cumulés, c'est-à-dire que l'employé-e n'a pas droit à plus d'une rémunération pour le même service.*

Article 30 - Reporting pay

Article 30 – Indemnité de rentrée au travail

30.01 *(a). When an employee is required to report and reports to work on the employee's day of rest, the employee is entitled to a minimum of three (3) hours'*

30.01 *a) Lorsque l'employé-e est tenu de rentrer au travail et qu'il ou elle s'y présente un jour de repos, il ou elle a droit à un minimum de trois (3) heures de rémunération au*

compensation at the applicable overtime rate of pay;

tarif des heures supplémentaires applicable;

30.04 *Payments provided under Article 28 (Call-Back Pay) and Article 30 (Reporting Pay) shall not be pyramided; that is, an employee shall not receive more than one compensation for the same service.*

30.04 *Les paiements prévus aux termes de l'article 28 (Indemnité de rappel au travail) et de l'article 30 (Indemnité de rentrée au travail) ne sont pas cumulés, c'est-à-dire que l'employé-e n'a pas droit à plus d'une rémunération pour le même service.*

IV. Summary of the arguments

A. For the grievor

[40] The bargaining agent's written submissions were retained on file. The applicable collective agreement provisions are articles 27 (overtime), 28 (call-back pay), and 29 (standby). Although the grievances straddle two collective agreements, the relevant provisions are identical. The bargaining agent relied on the following cases: *Borgedahl v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLREB 34; *Holmes v. Treasury Board (Department of the Environment)*, 2020 FPSLREB 112; *Séguin v. Treasury Board*, PSSRB File No. 166-02-23982 (19940408), [1994] C.P.S.S.R.B. No. 53 (QL); *Heath v. Treasury Board (Transport Canada)*, PSSRB File No. 166-02-25457 (19941124), [1994] C.P.S.S.R.B. No. 142 (QL); *Hugh v. Treasury Board (Human Resources Development Canada)*, PSSRB File No. 166-02-28126 (19990205), [1999] C.P.S.S.R.B. No. 19 (QL); *Pellicore v. Treasury Board (Citizenship and Immigration Canada)*, 2002 PSSRB 11; *Gasbarro v. Treasury Board (Canadian Transportation Accident Investigation and Safety Board)*, 2007 PSLRB 87; and *Beaulieu v. Canada Customs and Revenue Agency*, 2002 PSSRB 3.

[41] The bargaining agent argued that the language that the parties used in clause 28.01 specifies the phrase "called back to work" as opposed to "return to work" and that "[a]rticle 28.01(c) specifically contemplates being called back to work on a day of rest …". The provisions do not contemplate that when called back to work, a person must physically "… leave the location in which the employee was contacted". The call-back provisions do not contemplate a physical return to the workplace, and an employee can be "called back" even if the employee does not leave the physical location where he or she receives the call.

[42] Relying on the Board's decisions in *Holmes*, *Heath*, and *Séguin*, the bargaining agent argued that the grievor was entitled to "call-back pay" under the collective agreement for the phone calls she received on her days of rest in June, July, and August, 2011.

[43] Relying on the *Hugh* decision with respect to the standby pay issue, the bargaining agent argued that phone calls made at the employer's request can be found to constitute standby and should properly fall under the provisions of clause 29.01. This is in relation to the employer's guidelines that employees "... should call in prior to leaving to ensure that the ship has not changed time overnight". Relying on *Gasbarro*, the bargaining agent argued that a formal standby list or letter is not a necessary requirement to trigger the entitlement to standby pay. The 2011 overtime guidelines created the expectation that employees would be on standby to check their schedules or call in to ensure that inspections would proceed as planned.

B. For the employer

[44] The employer's written submissions were retained on file. These grievances relate to the interpretation of the provisions of two collective agreements, with expiry dates in 2011 and 2014. The provisions at issue are articles 27 (overtime), 28 (call-back pay), and 29 (standby). The employer cited the following cases: *Canada (Attorney General) v. Redden*, [1990] F.C.J. No. 950 (C.A.)(QL); *Heath*; *Helm v. Treasury Board (Health Canada)*, 2003 PSSRB 96; *Labatt Breweries Ontario (London) v. Brewery, General and Professional Workers' Union, Local #1*, 2006 CanLII 1319 (ON LA); *Grégoire v. Canadian Food Inspection Agency*, 2009 PSLRB 146; *Holmes*; *Borgedahl*; *Denboer v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 58; *Lemoire v. Treasury Board (Correctional Service of Canada)*, 2016 PSLREB 45; *Chafe et al. v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112; *Séguin*; *Smolic v. Treasury Board (Department of Industry)*, 2018 FPSLREB 34; *Gardiner v. Treasury Board (Correctional Service of Canada)*, 2013 PSLRB 128; *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30*, 2002 NBCA 30; *Professional Institute of the Public Service of Canada v. Treasury Board*, 2019 FPSLREB 108; *Beese v. Treasury Board (Canadian Grain Commission)*, 2012 PSLRB 99; *Communication Energy and Paperworkers Union, Local 777 v. Imperial Oil Strathcona Refinery* (2004), 130 L.A.C. (4th) 239; *Beaulieu*; *Hugh*; and *Canada (Attorney General) v. Duval*, 2019 FCA 290.

[45] A benefit involving a monetary cost to the employer must be clearly and expressly provided for in the terms of the collective agreement. The grievor bore the burden of proof of establishing her entitlement to the amounts claimed, on a balance of probabilities. The Federal Public Sector Labour Relations and Employment Board ("the Board") does not have inherent jurisdiction. Therefore, its authority is limited to and by the express terms of the collective agreement. The Board cannot modify or change a collective agreement's provisions; nor can it create new ones.

[46] On the call-back pay issue, the employer argued that it took no action to call the grievor back to work. According to the employer, to trigger the call-back pay provisions of the collective agreement, the grievor had to establish that she met the three criteria set out in clause 28.01, as follows:

1) she was "called back to work";
2) she "[returned] to work"; and
3) she was on a designated paid holiday (DPH), which was not her scheduled day of work, was on her day of rest, or had completed her work for the day and had left her place of work for the day.

[47] The employer argued that since the grievor was not equipped with special equipment to perform her normal duties outside the office and her normal duties were not extended and performed at home, she was not entitled to call-back compensation. It argued that the days claimed in June, July, and August 2011 fell on her days of rest when she was not ordinarily required to perform her position's duties and she was not called back by the employer to perform work. The employer states as follows:

> …
>
> *… Checking a voicemail is a mechanical gesture carried out with minimal effort or reflection … being advised that the scheduled work is going ahead as planned or, receiving a phone call advising of a change in the schedule of work, is not an extension of the grievor's duties for the purpose of being "called back" to work.*
>
> …

[48] Alternatively, the employer argued that checking voicemails was not "work" for the purpose of article 28. The tasks that the grievor completed while on standby were "*de minimis*" in nature and did not constitute a "disruption which triggers call-back pay." The employer further argued that "[t]he calls were brief in nature and little productive effort was actually exerted … the Grievor was subject to only a minimal degree of personal inconvenience or disruption, if at all." The employer further added

that she "… was being compensated for this work under the standby provision at the rate of half an hour per four (4) hour period of standby or part thereof."

[49] The employer argued that article 28 is triggered only in situations "… where an employee is called back to work and returns to work on a designated paid holiday, on a day of rest or after having worked and returned home on a regular work day." It was suggested but not forcefully argued that article 30 of the collective agreement (reporting pay) would be the more appropriate provision to cover the grievor's factual circumstances on the dates in question.

[50] With respect to the May 30, 2011, call-back pay claim, the employer argued that the grievor did not meet the criteria under clause 28.01, since the work activity occurred before her regularly scheduled shift. It further argued that the calls she took on days of rest (see the second grievance) fell under article 30 as opposed to article 28.

[51] The employer urged that the Board apply the principles enunciated in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), and that any remedy awarded should be limited to the 25-day period before the grievances were filed.

[52] With respect to the third grievance, the employer argued that it did not require the grievor to be on standby before her shift. She could not of her own volition put herself on standby. It was argued that while employees might have been invited to call in to ensure that scheduled inspections were on track, the invitation was made to reduce the inconvenience of going into the office for no reason. It was not a standby requirement. The employer argued that time spent making these calls is not compensable.

C. The grievor's reply

[53] On the call-back issue, the bargaining agent disputed the employer's reliance on article 30 for the calls taken on the grievor's days of rest and argued that the Board must consider the applicability of clauses 28.01(d) and (e) to her factual circumstances. According to the bargaining agent, clause 28.01(e) "… mimics the Grievor's circumstances with uncanny accuracy." The grievor "… had been quite literally 'called' to work **without leaving the location in which she was contacted**" [emphasis in the original].

[54] On the standby issue, the bargaining agent clarified that it was not a question of the grievor "… entering into a standby situation of her own volition …"; rather, it was a "… direct expectation of the Employer that the Grievor 'should' call in …" before leaving, to ensure that the ship inspection time had not changed overnight. Effectively, this "direct expectation" or the idea of "calling in" had to be remunerated under the collective agreement's standby pay provisions.

[55] This is the first time that the employer raised the issue of time limits as it relates to remedy. The *Coallier* principle should not be applied to the facts and circumstances of this case. The grievor followed the employer's advice and direction by altering and amending her overtime claims, and both parties clearly understood that she intended to file a grievance in a timely manner.

D. Issues

[56] The issue in these grievances can be simply stated as follows: Did the employer provide the grievor with the correct remuneration for the work activities she carried out on the specified dates in accordance with the collective agreement provisions?

V. Reasons

A. General principles of collective agreement interpretation

[57] Before dealing with each grievance, it is important to outline the applicable principles for interpreting and applying a collective agreement's provisions.

[58] The general principles of interpretation consist of rules of construction that adjudicators rely upon to ascertain the parties' true intention when a dispute arises as to the meaning and interpretation of a collective agreement provision.

[59] The fundamental presumption is that the parties are assumed to have intended the words expressed within that provision.

[60] The words used must be construed in their ordinary and plain meaning unless such an interpretation is likely to result in absurdity or would be inconsistent with the entire collective agreement.

[61] An adjudicator must consider the whole of a collective agreement as the overall agreement forms the context in which the words used are to be interpreted.

[62] In the event that the adjudicator is faced with a choice between two linguistically permissible interpretations, the adjudicator may be guided by the following:

- the purpose of the particular provision;
- the reasonableness of each possible interpretation;
- administrative feasibility; and
- whether one of the possible interpretations would give rise to anomalies.

[63] The fact that a particular provision may seem unfair is not a reason for an adjudicator to ignore it if it is otherwise clear.

[64] An adjudicator's decision may not have the effect of requiring that a collective agreement or an arbitral award be amended.

B. The relevant collective agreement provisions

[65] The collective agreement defines "overtime" in terms of the employee's employment status, namely, full-time or part-time. For full-time employees such as the grievor, clause 2.01(r) defines "overtime" as "authorized work in excess of the employee's scheduled hours of work …".

[66] Article 27 of the collective agreement specifies that "overtime" work shall be remunerated or compensated at the specified rates of pay. At the basic level, every 15 minutes of overtime is remunerated at a **time-and-one-half** rate of pay, which is defined as "… **one decimal five (1.5) times the employee's hourly rate of pay** …" [emphasis added]. For each hour of overtime worked after 15 hours are worked in any 24-hour period, the remuneration rate increases to **double time**, which is defined as "… **two (2) times the employee's hourly rate of pay** …" [emphasis added]. The double-time rate applies both after 7.5 hours of work are completed on an employee's first day of rest and to all work performed on the second and subsequent days of rest. For the double-time rate to apply, the second and subsequent days of rest must be "… an unbroken series of consecutive and contiguous calendar days of rest …".

[67] Article 28 of the collective agreement specifies how an employee is to be remunerated when he or she is called back to work on a DPH that is not the employee's scheduled day of work (which does not apply in this case), on an employee's day of rest, or 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. In essence, work performed by an employee will be remunerated under this article when one of these three conditions exists:

1) work is performed on a DPH that is not the employee's scheduled workday;
2) work is performed on an employee's day of rest; or
3) work is performed after the employee's regular workday is completed and after the employee has left the place of work.

[68] The opening language of clause 28.01 states that if "… an employee **is called back to work** …" [emphasis added] in any of the three detailed circumstances, then the employer must remunerate the employee in one of the ways set out in clauses 28.01(c)(i), (ii), and (e), as follows:

- three hours' pay at the applicable overtime rate up to a maximum of eight hours in an eight-hour period, including any applicable reporting pay;
- compensation at the applicable overtime rate for the time worked, provided that the period worked is not contiguous to the employee's normal hours of work; or
- a minimum of one hour of compensation at the applicable overtime rate with respect to each eight-hour period when the call-back requirement is completed without leaving the location in which the employee was contacted.

[69] In effect, the remuneration for work performed under the call-back provision is determined by the combination of two factors, as follows:

1) the applicable overtime rate as outlined in article 27 (time and a half or double time) **and (multiplied by)**
2) a minimum of 3 hours' pay for each call back to a maximum of 8 hours' compensation in an 8-hour period **or** the actual time worked by the employee, provided that period is not contiguous to the employee's normal hours of work.

[70] The employee is entitled to be paid the greater amount that results from the combination of 1) and 2). The only exception is when the call-back work is performed at the location where the employee was contacted, in which case the minimum of three hours is replaced by a minimum of one hour.

[71] Article 29 of the collective agreement deals with remuneration for situations in which the employer requires an employee to be available on standby during the employee's off-duty hours. The employee is compensated at the rate of 0.5 hours for each 4-hour period the employee was designated as being on standby duty. For instance, an employee who is on standby on a Sunday from 6:30 a.m. to 11:30 p.m. (or

16 consecutive hours) will receive a total of 2 hours of pay calculated at the applicable overtime rate.

[72] When an employee on standby is required to report for work on a day of rest, the employee is entitled to be paid the greater of 1) three hours' pay at the applicable overtime rate, to a maximum of eight hours' compensation in any eight-hour period, or 2) compensation at the applicable overtime rate for the actual overtime worked.

[73] There are three anti-pyramiding clauses in the collective agreement, at clauses 28.03, 29.06 and 30.04, that specify that payments provided under the overtime, reporting pay, DPH, standby and call-back provisions shall not be pyramided. It is specifically stipulated that an employee shall not receive more than one compensation for the same service.

C. Relevant factual findings

[74] The employer has a specific form and codes that employees must use to prepare their overtime claims. The form is called the "Attendance and Overtime Statement and Premium Report". It requires employees to insert the dates and start and finish times of the activities for which the claim is being made, the overtime and premium code being claimed and the relevant remuneration rate associated with that code, the number of hours claimed, and the reason for the overtime.

[75] These are the codes relevant to the issues in this case:

Common overtime codes	
009	Call back - article 28
064	Standby on a weekday - article 29
065	Standby on a weekend or DPH - article 29
260	Overtime after or before normally scheduled hours of work - article 27
261	Saturday scheduled overtime - article 27
262	Sunday scheduled overtime - article 27

[76] The facts relating to the events on the dates for which the grievor claimed remuneration are not in dispute; namely, she did carry out certain work-related activities on the dates and at the times noted in her extra-duty claims.

[77] For the claims in question, the relevant particulars, including the parties' respective positions, are summarized in this table:

Details of work activities	Grievor's claim	Employer's position
May 30, 2011 (Monday): 7:15 a.m. to 7:30 a.m. Phone call with agent **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** May 26 to 31	**009 (call back)** clause 28.01	**260 (overtime)** article 27
June 18, 2011 (Saturday): 12:04 p.m. to 12:24 p.m. A series of calls **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** June 16 to 19, 21, and 30	**009 (call back)** clause 28.01	**261 (overtime)** article 27 (Saturday scheduled overtime)
July 2, 2011 (Sunday): 12:49 p.m. to 1:20 p.m. Calls about ship changes **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** July 1 to 13 and 16	**009 (call back)** clause 28.01	**262 (overtime)** article 27 (Sunday scheduled overtime)
July 10, 2011 (Sunday): 1:18 p.m. to 1:34 p.m. FSD (Fraser Surrey Dock) inspection setup **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** July 1 to 13 and 16	**009 (call back)** clause 28.01	**262 (overtime)** article 27 (Sunday scheduled overtime)
August 27, 2011 (Saturday): 12:37 p.m. to 12:56 p.m. Series of (ALHB) Asian Long Horn Beetles calls **Regular work hours:** 10:00 a.m. to 6:00 p.m., Monday to Friday **On call:** August 22 to 28	**009 (call back)** clause 28.01	**261 (overtime)** article 27 (Saturday scheduled overtime)
March 17, 2012 (Saturday): 6:00 a.m. to 6:30 a.m. Phone calls **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** 4:00 p.m. to 10:30 p.m. (weekdays); 6:30 a.m. to 10:30 p.m. (weekends and DPHs)	**065 (standby)** article 29	**261 (overtime)** article 27

March 23, 2012 (Friday): 6:00 a.m. to 6:30 a.m. Phone calls **Regular work hours:** 8:00 a.m. to 4:00 p.m., Monday to Friday **On call:** 4:00 p.m. to 10:30 p.m. (weekdays); 6:30 a.m. to 10:30 p.m. (weekends and DPHs)	**064 (standby)** article 29	**260 (overtime)** article 27

D. Grievance no. 25641, Board file no. 566-32-42288

[78] The remaining dispute is the call that the grievor took on Monday, May 30, 2011, before her regularly scheduled shift and for which she claimed remuneration under clause 28.01. The employer compensated her for it under article 27 at the regular weekday overtime rate.

[79] The facts of the grievor's claim for this particular date do not bring her within the application of article 28 of the collective agreement. Monday, May 30, 2011, was not a day of rest or a DPH; therefore, for the grievance to succeed, the grievor had to bring herself with the requirements of clause 28.01(c), which contemplates a prerequisite that the employee must have started and completed his or her regularly scheduled shift. It was one of the grievor's on-call days, but her weekday on-call period is from 4:00 p.m. to 10:30 p.m. The facts in this case indicate that she took the call before completing any work on that day. She was not yet on call when the call was taken. I conclude that the work activities fall squarely under clause 27.01.

[80] The Board disagrees with the bargaining agent's contention that there is no exclusionary language in article 28 that would preclude applying it to calls that the grievor took before her regularly scheduled shift. The plain language of clause 28.01(c) clearly and unambiguously excludes work performed before the start of the employee's "work for the day".

[81] Furthermore, citing several Board decisions, the bargaining agent argued that a call back does not require returning to the workplace and that therefore, the May 30, 2011, call is compensable under clause 28.01. While I agree with the bargaining agent that the language used in clause 28.01(e) does not require an employee to return to the workplace to trigger its application, in my view, this is not the relevant consideration in this context. The time that the work activity in question is performed is the

predominant and relevant consideration — in this case, the work activity was carried out on a weekday, before the grievor's regular workday. Although she was on call from May 26 to 31, 2011, her weekday on-call hours were from 4:00 p.m. to 10:30 p.m., for which she received remuneration under article 29.

[82] I conclude that the employer properly compensated the grievor in accordance with the regular weekday overtime provisions. Therefore, the grievance is denied.

E. Grievance no. 26694, Board file no. 566-32-42289

[83] This grievance relates to calls that the grievor took on specified dates that were her days of rest and during which she was designated to be on call (standby). I will analyze each date in question.

[84] According to the employer's guidelines, weekday standby hours are from 4:00 p.m. to 8:00 p.m. and from 8:00 p.m. to 11:30 p.m., and weekend standby hours are from 6:30 a.m. to 11:30 p.m. in four-hour periods.

[85] On Saturday, June 18, 2011, the grievor was not scheduled to work; however, she was designated to be on standby, which meant that she was required to be available to "… return for work as quickly as possible if called." She took calls from a shipping agent between 12:04 p.m. and 12:24 p.m., which fell squarely within her standby period. She claimed the minimum call-back pay at the applicable overtime rate for Saturday. The employer denied the claim and asked her to resubmit it as a weekend overtime claim.

[86] I find that the factual circumstances in this case fall under clause 28.01(b) of the collective agreement. As she was designated to be on call, she was required to be available to perform work duties when called. It is undisputed that taking calls from a shipping agent about ship inspection schedules was part of the grievor's work duties. She was entitled to the minimum call-back pay under clauses 28.01(c)(ii) and (e). Since the grievor completed the call-back requirement without leaving the location in which she was contacted, clause 28.01(e) applies. Clause 28.01(e) changes the minimum pay available to her under clause 28.01(c)(i).

[87] On Saturday, July 2, 2011, the grievor was not scheduled to work; however, according to her overtime claim form, she was designated to be on call. She claimed call-back pay for a series of phone calls and messages made and received that day

between 12:49 p.m. and 1:20 p.m. The employer denied her call-back pay claim under clause 28.01 and treated the work as weekend overtime under article 27.

[88] I find that the factual circumstances in this case fall under clause 28.01(b) of the collective agreement. As the grievor was designated to be on call, she was required to be available to perform work duties when called. It is undisputed that taking calls from a shipping agent about a vessel inspection schedule was part of her work duties. Since the grievor completed the call-back requirement without leaving the location in which she was contacted, clause 28.01(e) applies. Clause 28.01(e) changes the minimum pay available to her under clause 28.01(c)(i).

[89] On Sunday, July 10, 2011, she received calls from 1:18 p.m. to 1:34 p.m. She was not scheduled to work but was designated to be on call. The employer denied her call-back pay claim and treated it as weekend overtime instead.

[90] I find that the factual circumstances in this case fall under clause 28.01(b) of the collective agreement. As the grievor was designated to be on call, she was required to be available to perform work duties when called. It is undisputed that taking calls from a shipping agent about a scheduled inspection was part of her work duties. Since the grievor completed the call-back requirement without leaving the location in which she was contacted, clause 28.01(e) applies. Clause 28.01(e) changes the minimum pay available to her under clause 28.01(c)(i).

[91] On Saturday August 27, 2011, she dealt with a series of calls between 12:30 p.m. and 12:56 p.m. She was not scheduled to work but was designated to be on call.

[92] I find that the factual circumstances in this case fall under clause 28.01(b) of the collective agreement. As the grievor was designated to be on call, she was required to be available to perform work duties when called. It is undisputed that taking calls from a shipping agent about a scheduled inspection was part of her work duties. Since the grievor completed the call-back requirement without leaving the location in which she was contacted, clause 28.01(e) applies. Clause 28.01(e) changes the minimum pay available to her under clause 28.01(c)(i).

[93] The Federal Court of Appeal in *Redden* recognized that each time the grievor responded to a call, he was "required to report for work" and should be paid accordingly. The employer did not suggest that the grievor had a choice to ignore the

calls on the dates in question. Simply by virtue of being on call meant that she had no choice but to respond to the calls. The employer attempted to distinguish the *Redden* case and went as far as suggesting that when she took the calls on her days of rest, she was not performing her regular duties. The evidence clearly established that these calls, involving interacting with shipping agents about ship inspections, were part and parcel of the grievor's regular duties as a multi-program specialist inspector. Furthermore, I disagree with the employer's suggestion that, in these circumstances, "… checking voicemails was not 'work' for the purpose of Article 28."

[94] The employer also relied on the *Holmes* decision; however, it is factually distinguishable from this case. In that case, the login to the computer occurred at the end of the grievor's shift and was meant to "end" his standby status. The adjudicator found that the grievor was not required "to report to work" by logging in; rather, it was an action to put an end to his standby duties. The adjudicator explained as follows:

> *[30] As indicated in clauses 28.11 and 30.04, standby status changes when there is a request from the employer to report to duty or answer a call. However, I find that the grievor did not establish that either of those clauses was applicable in the circumstances of this case. "Call-back" means being "…called back to work" (clause 29.01 of the collective agreement). The grievor's login put an end to his standby duties; it certainly did not call him back to work. Again, the grievor was not required to report to work in accordance with clause 30.04. Otherwise, clause 28.11 applies when an employee on standby receives a call to duty or responds to a telephone or data line call. The grievor did not respond to a telephone call or data line call. I cannot see a simple login, to end a standby shift, as being a call to duty… I was not convinced that the requirement to login to end standby was a call to duty or a request to report to work from the employer.*

[95] Unlike the facts in the *Holmes* decision, the description of the nature of these calls on the claims forms as well as the grievor's evidence demonstrate that these calls were not "trivial work", as suggested by the employer.

[96] The bargaining agent extensively dealt with the issue of "return to work" in the context of clause 28.01, arguing that an actual or physical return to the workplace is not necessary to trigger call-back pay. The employer, on the other hand, argued that an actual return to work is a condition precedent to an entitlement to call-back pay under clause 28.01. In so arguing, the employer appears to focus solely on clause 28.01(c) which states that "… 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 …”. Accepting the employer’s interpretation would lead to an absurdity, because the phrase “returns to work” is inapplicable to clauses 28.01(a) and (b), which specifically contemplate a situation in which the employee has not yet been to the workplace. Clause 28.01(a) contemplates that the employee is not scheduled to work on a designated paid holiday. Clause 28.01(b) contemplates that the employee is on his or her day of rest when an employee is not required to perform the duties of their position. In both instances, the employer’s interpretation would be untenable. Under Article 28.01, an employee who “is called back to work” need not physically attend the workplace by virtue of the operation of clause 28.01(e).

[97] The employer also argued that requests for an employee to report to work on a day of rest fall under article 30 of the Collective agreement rather that article 28. It is true that both Articles 28.01 and 30 deal with an employer requiring an employee to perform work activities on a day of rest or on a designated paid holiday but that is where the similarity ends because these provisions must be applied to factual circumstances. In the context of this grievance, the grievor was on standby as required by the employer on the four dates in question. The parties have agreed under Article 29 of the collective agreement that an employee designated for standby duty “**shall be available to return for work as quickly as possible if called**” [emphasis added] meaning that there are constraints put on the employee’s free time on his or her days of rest or on a designated paid holiday when the employee is not scheduled for work. I therefore find that factually, Article 30 is not applicable.

[98] Furthermore, the employer’s interpretation would render clause 28.01(e) meaningless. I agree with the bargaining agent that clause 28.01(e) “… mimics the Grievor’s circumstances with uncanny accuracy.” The grievor was on call (or standby) on each of the dates in question, and her mutual expectation with the employer was that she would be available to work when called upon. In this context, and unless specifically instructed otherwise, being called upon included responding to calls from shipping agents outside regular hours due to the very nature of the employer’s operations.

[99] I conclude that on the four dates in question, June 18, 2011, July 2, 2011, July 10, 2011 and August 27, 2011, the grievor was called back to work and is entitled to be

remunerated pursuant to clause 28.01(e) of the collective agreement. Therefore, the grievance is allowed.

F. Grievance no. 27454, Board file no. 566-32-42290

[100] The claims at issue in this grievance pertain to calls that the grievor made on March 17 and 23, 2012, before her scheduled shift. She claimed compensation under the collective agreement's standby provisions. Both calls lasted less than 15 minutes. Therefore, she received no compensation under the overtime provisions. In its written submissions, the bargaining agent acknowledged, "On both occasions the Grievor began work at 6:30am. The Grievor was not on active standby duty at the time that the calls were made at 6:00am."

[101] Due to the nature of its operations, the workplace has a standby system under which the employer designates all employees to be on standby outside office hours. Standby hours are designated in four-hour periods. There are two standby periods on weekdays and four on weekends. Weekday standby hours are from 4:00 p.m. to 8:00 p.m. and from 8:00 p.m. to 11:30 p.m. Weekend standby hours are from 6:30 a.m. to 11:30 p.m. in four-hour chunks.

[102] Article 29 of the collective agreement specifies that the employer must designate or require an employee to be on standby and provides as follows:

> *29.01 Where the Employer requires an employee to be available on standby ….*
>
> *29.02 An employee designated by letter or by list for standby duty shall be available during his or her period of standby at a known telephone number and be available to return for work as quickly as possible if called.…*

[103] Relying on cases like *Gasbarro*, *Beaulieu*, and *Hugh*, the bargaining agent distinguished between "active standby duty" and a "de facto" or "implied" standby situation. It argued that the employer's direction that inspectors phone in before a morning inspection to ensure that the inspection was proceeding as scheduled created a de facto standby situation for the grievor. I disagree. This argument is not supported by the clear, plain, and unambiguous language in the collective agreement as well as the uncontradicted evidence.

[104] In *Gasbarro*, the adjudicator based his finding of the existence of a de facto standby situation on the evidence; namely, there was no official standby authorization in the grievor's workplace, and the employer had created an expectation on the part of the employees that they had to be available for deployment contacts during their off-duty hours. Arriving at his conclusion, the adjudicator cautioned as follows:

> *96 Clause 30.01 of the collective agreement and other provisions similar to it suggest the possibility that different types of evidence, direct or indirect, can be adduced to prove the grounds for standby pay. The case law demonstrates that an adjudicator may find evidence of a* de facto *standby arrangement in the practical requirements or operations of a workplace where no official standby authorization exists. It may even be possible, as in* Beaulieu et al.*, to discern a substantive standby requirement in a situation where there is confusion about the employer's standby expectations in the workplace, whether intentionally or unintentionally caused. On the other hand, an employee may not, on his or her own initiative, act as if there were a requirement to be available at all times and then hold the employer liable for standby compensation.*

[105] In *Beaulieu*, there was cogent evidence that the employer represented to the dog handlers that the position required the incumbent to "… be on call 24 hours a day." The adjudicator found that over a period of five years, the employer had "… created an environment which led to confusion as to the nature of the responsibilities of dog handlers during off-duty hours." He concluded that the collective agreement provision did not preclude creating standby situations in some manner other than the creation of a formal standby list, but he also cautioned that "… an employee cannot, of his or her own volition, decide to be on standby."

[106] The grievor testified that before 2011, the employer paid standby rates for check-in calls. It was also argued that the direction given that inspectors phone in to ensure that the ship inspection schedule had not changed overnight created an expectation that the employees would be available to make those calls. In essence, these arguments and the findings in *Gasbarro* and *Beaulieu* are anchored on principles of past practice, estoppel, waiver, and representation. I do not find those principles applicable to this case.

[107] The 2009 overtime guidelines provided as follows:

…

> - ***Codes*** *to use 064(weekdays) and 065(weekends and holidays)*
> - ***Weekdays***
>   - *Standby is from 1600 - 2230 (Two - 4 hr periods)*
> - ***Weekends / Holidays***
>   - *Standby is from 0630 — 2230 (Four — 4 hr periods)*
> - *Entitlement is for ½ hour pay for each of the periods*
>   - *To claim this you just need to enter the entitlement once for each period, there is not a need to show coverage the whole time you are on standby.*
>   - *When you are on standby, show the dates and times in the remarks section.*
>
> *…*
>
> [Emphasis added]

[108] The 2009 overtime guidelines also provided as follows:

> *…*
>
> ***Standby***
>
> - *Calling in before a ship*
>   - *If you work a morning ship, and you call in to check messages, you can claim ½ hour standby before the OT starts.*
>
> *…*
>
> [Emphasis added]

[109] The 2009 overtime guidelines were revised in 2011. The standby provision for calling in before a ship arrived for inspection was removed and replaced as follows:

> *…*
>
> ***Monitoring Harbour Phone Line***
>
> *Weekday Mornings*
>
> - *There will not normally be OT in the morning due to the new shift schedule.*
> - *If you are coming in for OT in the morning for a ship, you should call in prior to leaving to ensure that the ship has not changed time overnight*
> - *If this call/s [sic] take longer than 15 min (ie due to changes you have to make multiple calls) then you are compensated for time worked as overtime code 260*
> - *If they take less than 15 min, there is no compensation.*
>
> [Emphasis added]

[110] The grievor testified that she did not agree with the 2011 revisions to the 2009 overtime guidelines. Even were I to accept that there was a past practice under which the employer remunerated pre-shift calls under the standby provision, such a practice ceased with due notification in the 2011 overtime guidelines revision.

[111] The bargaining agent is correct that this dispute is about which article of the collective agreement should apply to pre-shift-schedule verification calls. In my view, the time spent on them falls within the definition of "overtime" under the collective agreement. The calls are authorized, and they are made outside the employee's "scheduled hours of work", per that definition. The minimum threshold to receive compensation for overtime work is 15 minutes. Calls that last less than 15 minutes are not compensable under the collective agreement.

[112] I conclude that the standby provision did not apply to the pre-shift-schedule verification calls. Therefore, the grievance is denied.

[113] Both parties made submissions regarding the applicability of the principle in the *Coallier* case. Based on the evidence, I find that the *Coallier* principle is not applicable.

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

(The Order appears on the next page)

VI. Order

[115] The grievance in Board file no. 566-32-42288 is denied.

[116] The grievance in Board file no. 566-32-42289 is allowed. Within 90 days of the issuance of this order, the employer must pay the grievor the additional amounts payable for the dates at issue, in accordance with article 28 of the collective agreement.

[117] The grievance in Board file no. 566-32-42290 is denied.

[118] The Board will remain seized for 90 days to address any question relating to the calculation of the amounts due under this order.

October 14, 2022.

Caroline E. Engmann,
a panel of the Federal Public Sector
Labour Relations and Employment Board