Date: 20230530

File: 569-32-40842

Citation: 2023 FPSLREB 55

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

PUBLIC SERVICE ALLIANCE OF CANADA

Bargaining Agent

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as
Public Service Alliance of Canada v. Canadian Food Inspection Agency

In the matter of a policy grievance referred to adjudication

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

For the Bargaining Agent: Kourosh Farrokhzad, Public Service Alliance of Canada

For the Employer: Jena Montgomery, counsel

Heard by videoconference,
September 6 and 7, 2022.

REASONS FOR DECISION

I. Summary

[1] The Public Service Alliance of Canada ("the bargaining agent") grieved the creation of the "National Extra Duty Pay & Mileage Interpretation Tool" ("the Tool") on behalf of its members working as inspectors at the Canadian Food Inspection Agency ("the employer"). This policy grievance alleges that the Tool and its introduction of the words "scheduled" and "unscheduled" violates articles 27 through 31 which include overtime, call back, stand-by, reporting pay and designated paid holiday in the collective agreement between the employer and the bargaining agent that expired on December 31, 2014 ("the agreement").

[2] The bargaining agent submitted in argument that this action caused a drastic and negative impact on the of the payment of collective agreement benefits. The grievance requests that the Board order the impugned words in the Tool be removed.

[3] The bargaining agent carried the burden of proof in this matter. It adduced relatively little evidence in support of its grievance other than to call one witness who presented mostly opinions that the Tool was contrary to the agreement. He further stated that some unnamed members of the association had been denied benefits owed to them under the agreement but gave insufficient detail to support those examples.

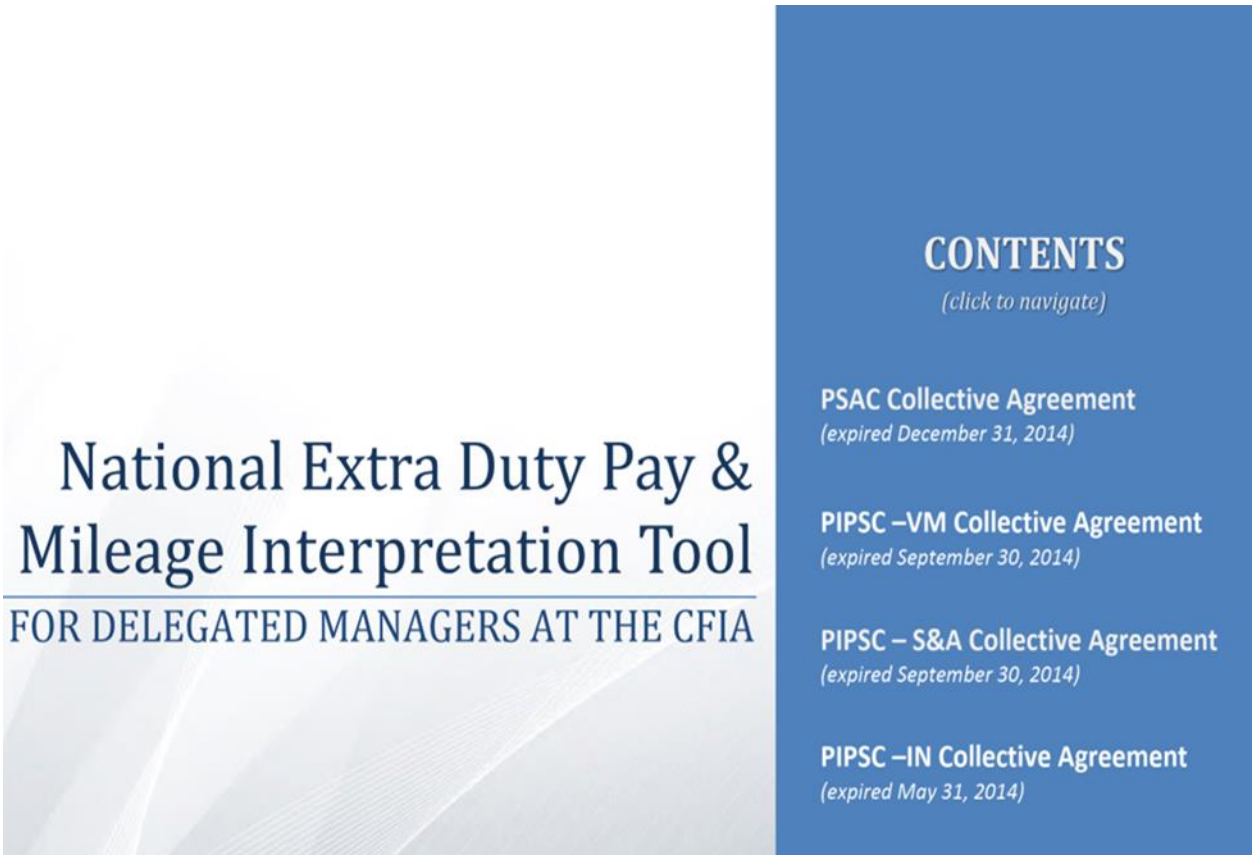
[4] The employer asserted that the words at issue in the Tool, namely, "scheduled" and "unscheduled", are consistent with the collective agreement's articles and do not alter their function. Which it stated have remained unchanged for years.

[5] Given the lack of clear and compelling evidence, I conclude that the grievance fails as the bargaining agent has not met its burden of proof.

II. Evidence

[6] This case turns upon the interpretation of the Tool's text and of the collective agreement articles at issue.

[7] The Tool appears as follows:



Type of Over Time		Qualifiers		Application
Overtime (scheduled or contiguous)		Hours worked		Time and a half (1.5) or double time (2.0) as applicable (27.01) Time and ¾ (1.75) is the OT rate for employees on variable (e.g. compressed) work schedule (24.06 & 24.15(g)) All calculations of overtime shall be based on each completed period of fifteen (15) minutes
Overtime (non-contiguous, notified same day) (same-day **return** to work non-contiguous with the employee's work period)	Employee advised **before** earlier of meal break or midpoint of work day	The greater of: Time actually worked at O/T rate	Minimum of 2 hours pay at straight time	
	Employee advised **after** meal break or midpoint of work day	The greater of: Time actually worked at O/T rate	Minimum of 3 hours pay at straight time	
Call Back (Non-contiguous – an unscheduled return to work after having already worked on a regular work day, paid holiday which is not a scheduled day of work or day of rest)		When returning to work, the greater of: 3 hrs min O/T rate to max 8 hrs in an 8 hr period	Hrs worked O/T rate	Not applicable to part time employees (28.01(d)) (see 61.06) Overtime, Reporting Pay, Designated Paid Holiday, Stand By and Call Back cannot be pyramided (28.03).
		Without leaving location where contacted: 1 hr min which applies only once in respect of each 8 hr period		
Stand-By (Designated status by letter or list, and employee is available for work, if required - Article 29.02)		One-half Hr for each 4Hr period or part thereof		No standby payment if unable to report to work (29.03) Overtime, Reporting Pay, Designated Paid Holiday, Call Back and Stand By cannot be pyramided (29.06). When reporting to work as per 29.04, same *qualifiers* as Call Back (28.01)
Reporting Pay (Unscheduled work on a Day of Rest. If on standby, refer to Article 29.01)		The greater of: 3Hrs min O/T rate	Hrs worked O/T rate	Not applicable to part time employees (30.01(b)) (see 61.05 for payment details) Call Back and Reporting Pay cannot be pyramided (30.04).
Designated Paid Holiday		Hours worked		Time and a half (1.5) or double time (2.0) as applicable Double time (2.0) if contiguous to a day of rest where OT was worked
Designated Paid Holiday (Unscheduled)		The greater of: 3 hrs min O/T rate to max 8 hrs in an 8 hr period	Hrs worked O/T rate	

[8] The bargaining agent called one witness, Milton Dyck to testify. He stated that he is a long-standing member of the union executive. He repeated several times that the employer did not consult the bargaining agent before it released the Tool. For greater clarity, this matter of consultation was not pursued in closing arguments.

[9] Mr. Dyck opined that the Tool was created in response to some employer regions across the country introducing new collective agreement interpretations that denied employees some entitlements. He said that he thought that the Tool was a means to try to justify those earlier denials and added that in his opinion, the Tool disentitled employees of their collective agreement benefits.

[10] Mr. Dyck explained that the Tool introduced the words “scheduled” and “unscheduled” into the articles of the agreement being challenged in this grievance. And that in his opinion this introduction of these two words was inconsistent with and in violation of the agreement.

[11] In reply to the final question posed to Mr. Dyck, he acknowledged an exhibit in the joint book of documents that contained the July 4, 2019, second level grievance response by the employer. While Mr. Dyck only briefly acknowledged this document, my own reading of it shows some detailed discussion of alleged past practice by the employer and the claim of estoppel to prevent the employer from allegedly withholding payment of agreement entitlements. For greater clarity, this matter of past practice was not pursued to any material extent by the bargaining agent either in its examination of the two witnesses that came before the hearing or in closing submissions other than to repeat the allegation that the Tool caused the loss of what was previously payment of benefits related to the articles at issue.

[12] In cross-examination, Mr. Dyck added that pay and mileage reimbursement for work done on a day of rest had regularly been paid until the Tool was introduced. When directed to clause 25.03, he admitted that lists of employees available for overtime assignments were indeed used and that they were sometimes booked for overtime days or possibly even weeks in advance. He also agreed that the collective agreement had been consistent since the 1999 version.

[13] The only other witness to testify was Richard Wiaz who was called by the employer. He has several years’ experience as a labour relations advisor, and he

contributed to the Tool's preparation. He offered his opinion that nothing changed with the Tool's introduction and further that nothing in it is inconsistent with the collective agreement's text. He also opined that in each article at issue in the grievance, "scheduled" merely confirmed or clarified what had always been the existing situation. He said that it involves reasonable advance notice that employees will be assigned overtime contiguous with their scheduled workdays. He offered an example in which a person is informed in advance (up to two days and at least by the midpoint of the workday).

[14] Mr. Wiaz then addressed the call-back clause and said that an unscheduled call back refers to a person who has already left work after their normal hours and is then called back to work, without advance notice. He added similar descriptions for the other clauses, in which a person is given reasonable advance notice of being assigned work on a day of rest.

[15] In cross-examination, Mr. Wiaz said that he did not have personal knowledge of whether any advance consultation with the bargaining agent occurred before the Tool was promulgated. He said that he was unaware if the bargaining agent reacted strongly to the Tool but said that he was aware that 108 grievances about matters in it were still outstanding as of the hearing.

[16] When asked about the issue of the words "scheduled" and "unscheduled" in the overtime clause, he essentially repeated his earlier example and said that if he is scheduled several days in advance to work overtime, then it would be scheduled. And he contrasted this with an example of a person being told at the last minute that they are required to work longer, which would be unscheduled overtime.

III. The Collective Agreement

[17] The grievance challenges that the Tool violates the text of agreement clauses 27 to 31 (overtime, call-back, standby, reporting pay and designated paid holiday respectively). The specific text of the articles noted by the parties in their submissions are reproduced as follows:

[18] Article 27 provides overtime rights and obligations. Clause 27.01 stipulates the overtime rate when advance notice is given per clause 27.03, which states this:

27.03 *Subject to the operational requirements of the service, the Employer shall make every reasonable effort:*	***27.03*** *Sous réserve des nécessités du service, l'Employeur doit faire tout effort raisonnable :*
(a) to avoid excessive overtime work and to offer overtime work on an equitable basis amongst readily available, qualified employees;	*a) pour répartir les heures supplémentaires de façon équitable entre les employé-e-s qualifiés, immédiatement disponibles,*
and	***et***
(b) to give employees who are required to work overtime ***reasonable advance notice*** *of the requirement.*	*b) pour donner aux employé-e-s tenus de faire des heures supplémentaires* ***un préavis raisonnable concernant*** *cette exigence.*

[Emphasis added]

[19] Clause 27.05 grants as follows a minimum number of overtime hours scheduled the same day:

27.05 *(a) If an employee is given instructions before the beginning of the employee's meal break or before the midpoint of the employee's work day whichever is earlier, to work overtime on that day and reports for work at a time which is not contiguous to the employee's work period, the employee shall be paid for the time actually worked, or a minimum of two (2) hours' pay at straight time, whichever is the greater;*	***27.05*** *a) Si un-e employé-e reçoit l'instruction, avant le début de sa pause-repas ou avant le milieu de sa journée de travail, soit celui des deux (2) moments qui se produit le plus tôt, d'effectuer des heures supplémentaires ce même jour et se présente au travail dans une période qui n'est pas accolée à sa période de travail, il ou elle a droit à la plus élevée des rémunérations suivantes : soit celle qui s'applique aux heures réellement effectuées, soit une rémunération minimale de deux (2) heures au tarif normal.*
(b) If an employee is given instructions, after the midpoint of the employee's work day or after the beginning of his or her meal break whichever is earlier, to work overtime on that day and reports for work at a time which is not contiguous to the employee's work period, the employee shall be paid for the time actually worked, or a minimum of three (3) hours' pay at	*b) Si un-e employé-e reçoit l'instruction à celui des deux (2) moments suivants qui se produit le plus tôt, soit après le milieu de sa journée de travail, soit après le début de sa pause-repas, d'effectuer des heures supplémentaires ce même jour et se présente au travail dans une période qui n'est pas accolée à sa période de travail, il ou*

straight time, whichever is the greater;	*elle a droit à la plus élevée des deux (2) rémunérations suivantes :* *soit celle qui s'applique aux heures réellement effectuées, soit une rémunération minimale de trois (3) heures de travail au tarif normal.*
*(c) When an employee **is required to report for work and reports** under the conditions described in (a) or (b) above ….*	*c) Lorsque l'employé-e **est tenu de se présenter au travail et se présente effectivement au travail** dans les conditions énoncées en a) ou b) ci-dessus* […]

[Emphasis added]

[20] The conditions for call-back pay eligibility are provided for in clause 28.01:

***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**,*
*(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* […]

[Emphasis added]

[21] Article 29 stipulates the standby duty as follows:

***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 (½) hour for each four (4) hour period or part thereof for which the employee has been designated as being on standby duty.*	***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 (½) de travail pour chaque période entière ou partielle*

	de quatre (4) heures durant laquelle il ou elle est en disponibilité.
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.*	***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.*
…	[…]

[22] Reporting-pay eligibility is stipulated as follows in clause 30.01:

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' compensation at the applicable overtime rate ….*	***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 tarif des heures supplémentaires applicable* […]

[Emphasis added]

[23] Reporting for work is provided for in clause 31.06, which reads as follows:

31.06 *When an employee* ***is required to report for work and reports*** *on a designated paid holiday, the employee shall be paid the greater of:*	***31.06*** *L'employé-e qui* ***est tenu de se présenter au travail*** *un jour férié désigné* ***et qui s'y présente*** *touche la plus élevée des deux rémunérations suivantes :*
(a) compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each	*a) une rémunération équivalant à trois (3) heures de rémunération calculée au tarif des heures*

reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period ….	*supplémentaires applicable pour chaque rentrée jusqu'à concurrence de huit (8) heures de rémunération au cours d'une période de huit (8) heures* […]

[Emphasis added]

IV. Summary of the Submissions

A. For the bargaining agent

[24] The employer unilaterally introduced a new policy, the Tool, in early 2016 that drastically and negatively impacted its employees. The Tool was introduced with no evidence of meaningful consultation with the bargaining agent, and it led to over 100 grievances that were still outstanding as of the hearing.

[25] The bargaining agent submitted that the collective agreement language does not support that interpretation. It added that the Tool amounts to a *prima facie* violation of the collective agreement's terms, specifically articles 27 through 31.

[26] While clauses 27.05(a) and (b) set out the minimum hourly rate on the basis of when overtime is scheduled, it is clear that they were intended to apply only to the overtime provisions of article 27 rather than to the totality of the subsequent articles dealing with call-back pay, standby, reporting pay, and designated paid holidays.

[27] The bargaining agent argued that the Tool introduced the definitions of "scheduled" and "unscheduled" into the provisions of these articles when no such definitions existed. This rendered much of the overtime and mileage premiums in articles 28 through 31 potentially meaningless, because if the employer "schedules" the work in advance, as set out by the Tool's definition, then its employees no longer have access to the overtime premiums as described previously.

[28] It also agued that the plain fact is that the language of these articles does not bear this out. Had the parties intended to make the overtime premiums dependent on the definition of "scheduling" set out in the Tool, then this language should appear in the articles.

[29] The bargaining agent requested the following:

- that “scheduled or” be removed from the overtime reference;
- that “an unscheduled” be removed from the call-back reference;
- that “Unscheduled” be removed from the reporting-pay reference; and
- that “Unscheduled” be removed from the designated-paid-holiday reference.

[30] The bargaining agent relied upon *Borgedahl v. Treasury Board (Correctional Service of Canada)*, 2020 FPSLREB 34 at para. 29, which noted the need to interpret a collective agreement by taking the words at issue at their ordinary meanings and within the context of the whole agreement unless an absurdity results.

[31] It also noted the 46-year-old decision of *Graham v. The Treasury Board (Department of National Revenue - Customs and Excise)*, PSSRB File Nos. 166-02-2735 to 2737 (19770119). Without commenting on whether the collective agreement at issue in that 1977 decision bore any resemblance to the one at issue before me, the bargaining agent highlighted the fact that that decision noted the importance that the words, “required to report for work”, be interpreted in their context (see page 8). It also highlighted the part of the reasons that stated this:

> …
>
> *… A more reasonable rationale, suggested by the employer’s witnesses, is that transportation compensation is provided to meet the problem of being unable to arrange alternate transportation in advance, i.e. when the employee is unexpectedly required to come to his work location in the call-back, standby and non-contiguous overtime situations.…*
>
> …

[32] Curiously, the bargaining agent’s book of authorities also included *Helm v. Treasury Board (Health Canada)*, 2003 PSSRB 96 at para. 32, which found, “The scheme of the collective agreement is such that, generally speaking, notice cannot be given in a call-back situation but it can for overtime.” I say curiously, because that decision supports the employer’s impugned wording in the Tool as it added “unscheduled” to the call-back provision. In argument, it specifically noted paragraph 31 of *Helm*, which examined clause 9.03 of the collective agreement at issue in that decision and noted how it stated, “Except in cases of emergency, call-back, stand-by or mutual agreement, the Employer shall wherever possible give at least twelve (12) hours’ notice of any requirement for the performance of overtime.” It then contrasted that language with the agreement at issue in this decision and said that no such language exists in it.

[33] I see nothing relevant to the grievance before me from the bargaining agent's reference to the passage at paragraph 31 of *Helm*.

[34] As for the Public Service Staff Relations Board's other finding in *Helm* that I have noted, I concur with the employer's submissions regarding the point that if notice cannot be given for a call back, then it is in essence unscheduled. Again, if something occurs without notice, then I agree that it is unscheduled.

[35] And finally, the bargaining agent noted *Jefferies v. Canadian Food Inspection Agency*, 2003 PSSRB 55, for the proposition that that case involved a matter of payment being required for personal-vehicle mileage for travel when an employee was required to report for work on a designated paid holiday, which did not need interpretive assistance from a tool. It also argued that with the Tool, the employer can avoid paying for an employee's travel to work on a holiday by scheduling the work before the midpoint of the employee's day or meal break, thus denying the employee overtime premiums and mileage. I don't find this case persuasive that the impugned language in the Tool is in violation of the agreement.

B. For the employer

[36] The employer submitted that the words in a provision 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 (see Donald Brown, *Canadian Labour Arbitration*, 5th edition, Chapter 4.III.B ss. 4:21 "Normal or Ordinary Meaning", EBA; *Association of Justice Counsel v. Treasury Board*, 2015 PSLREB 18 at para. 89).

[37] Words must be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the agreement, its object, and the intention of the parties (see Donald Brown, *Canadian Labour Arbitration*, 5th edition, Chapter 4.III.B ss. 4:27 "The Context of the Agreement", EBA; *Chafe v. Treasury Board (Department of Fisheries and Oceans)*, 2010 PSLRB 112 at para. 51).

[38] The words in clauses 27.03 (overtime), 28.01 (call back), 30.01 (reporting pay), and 31.06 (designated paid holiday) clearly and unambiguously incorporate the words "scheduled" and "unscheduled".

[39] Both the Federal Court and the Board have recognized and affirmed that understanding. The wording of the clauses has remained unchanged since the first collective agreement was signed in the late 1990s, even after decisions were made that clearly indicated that the wording incorporated "scheduled" and "unscheduled". This jurisprudential landscape begs this question: If the parties intended the words to mean something else, then why did they not change them? The reason is simply that the parties have always intended the wording to include "scheduled" and "unscheduled".

[40] The employer submitted that the words of the collective agreement are clear and well understood and were previously the subject of Board scrutiny. It also noted that an adjudication by the Board cannot effectively amend a collective agreement and that when a monetary benefit and cost to the employer is sought, it must be found in clear language of the collective agreement as it will not be found to exist by mere inference or implication (see *Wamboldt v. Canada Revenue Agency*, 2013 PSLRB 55 at para. 27). Counsel for the employer submitted that the words used in clauses 27.03 (overtime), 28.01 (call back), 30.01 (reporting pay), and 31.06 (designated paid holiday) clearly and unambiguously incorporate the words "scheduled" and "unscheduled".

[41] In their submissions, the employer noted the term "schedule in advance" imports the sense of a reasonable advance notice. An employee's recall would be scheduled in advance if notice was provided far enough ahead of time to allow them to make their own plans so as to say the employee was scheduled to work at an indicated time just like being "scheduled" to see a doctor (at 549 and 550). *AGC v. Tucker*, [1979] 1 FC 543 ("*Tucker*").

[42] It also submitted that *Canada (Treasury Board — Transport) and McGregor, Re*, 1992 CanLII 14655 (PSSRB) recognized *Tucker* (and *Re Reid Dominion Packaging Ltd. and Teamsters Union, Loc. 879* (1981), 1 L.A.C. (3d) 314) considered the meaning of "reasonable advance notice" and recognized that it involves scheduled work sufficiently ahead of time so employees can plan their lives (at 341).

[43] It also submitted that the words, "when an employee is called back to work" has been found to require a call to be made (para. 31). And that the scheme of the collective agreement is such that generally speaking, notice cannot be given in a call-back situation, but it can for overtime. The six weeks' notice removes it from the application of call-back (para. 32). *Helm v. Treasury Board*, 2003 PSSRB 96. And absent

anything contrary, call-back pay is intended to refer to a situation when an employee has to return to the workplace to perform some extra service at the employer's request. It includes the need to travel from the employee's home to the workplace (paras. 66 and 70). *Borgedahl v. Treasury Board (Correctional Service Canada)*, 2020 FPSLREB 34.

[44] The employer also submitted that the words "when an employee is required to report for work and reports" in standby, reporting pay, overtime and designated paid holiday clauses refers to when an employee reports for work outside normal scheduled hours of work (para. 35). The words are for instances when the employer needs the services of an employee on short notice and thereby a premium is paid (para. 38). *Jefferies v. Canadian Food Inspection Agency*, 2003 PSSRB 55. And also that overtime scheduled and released two weeks in advance (para. 1) was affirmed as different in the collective agreement between scheduled and non-scheduled overtime and was consistent with *Graham*, (PSSRB 166-2-2735 to 2737) and *Jefferies*. It was also affirmed that the expression "is required to report and reports" refers to when reporting is required on short notice and is not scheduled (paras. 3 and 4).

V. Reasons

[45] This policy grievance was filed under s. 220(1) of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) and was referred to the Board for adjudication under s. 221. The employer correctly noted that the Board has found that the onus is on the bargaining agent to clearly demonstrate on a balance of probabilities that the employer contravened the collective agreement and that when the grievance asserts a right to a monetary benefit, it must demonstrate that clear language exists in the collective agreement to impose such a burden on the employer (see *Arsenault v. Parks Canada Agency*, 2008 PSLRB 17 at para. 29; and *Allen v. National Research Council of Canada*, 2016 PSLREB 76 at para. 180).

[46] Both parties referred to scholarly sources and jurisprudence that speak to prudent contract interpretation that seeks to determine the parties' intent and give words their ordinary meanings while staying consistent within the context of the agreement as a whole, unless doing so would lead to an absurd result. Also noted was that the interpretation of a collective agreement may not have the effect of causing an amendment to it (see *Borgedahl*, at para. 29; and *Graham*, at 8).

[47] I find the evidence and jurisprudence submitted in support of this grievance lacking. The bargaining agent's submissions rest upon repeated allegations and lack evidence to substantiate their opinions that the impugned words in the Tool somehow contradict the words of the impugned articles of the agreement.

[48] The bargaining agent indicated that many personal grievances have been filed alleging violations of the various provisions of the agreement cited in this matter. I trust these individual grievances will present the Board with additional particulars and evidence that will better elucidate the bargaining agent's concerns related to the introduction of the Tool.

[49] Furthermore, I find the employer's cited jurisprudence persuasive in showing how the impugned "scheduled" and "unscheduled" words in the Tool fit consistently with the relevant clauses in the agreement.

[50] I concur with the relevant jurisprudence cited by the employer that the texts of clauses 27.03 and 27.05 (overtime), 28.01 (call back), 30.01 (reporting pay), and 31.06 (designated paid holiday) clearly import and incorporate the concepts of "scheduled" and "unscheduled" as has been found in the previously noted jurisprudence presented by the employer.

[51] As such, I conclude that the bargaining agent failed to meet its burden of proof in this matter, and I deny the grievance.

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

(The Order appears on the next page)

VI. Order

[53] The grievance is denied.

May 30, 2023.

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