Date: 20251023

File: 566-02-49586

Citation: 2025 FPSLREB 140

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

MATTHEW TURNER

Grievor

and

TREASURY BOARD
(Department of Fisheries and Oceans)

Employer

Indexed as
Turner v. Treasury Board (Department of Fisheries and Oceans)

In the matter of an individual grievance referred to adjudication

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

For the Grievor: Samantha Lamb, counsel

For the Employer: Raphael Domingo Bah, counsel

Heard by videoconference,
April 24, 2025.

REASONS FOR DECISION

I. Summary

[1] This decision considers an unfortunate turn of events undoubtedly influenced by the workplace challenges posed early in the pandemic era.

[2] The grievor was an engineering officer whose annual assignment was to work on the *Hudson*. It was determined that he was not required to be assigned to staff the ship due to it being in drydock for repairs and due to the pandemic health-and-safety restrictions on staff in the workplace.

[3] He was offered two alternate options for assignment. He declined the first option for three weeks of work at sea on another vessel with one additional week on leave. Instead, he elected to use the leave credits that accumulate from a process while he is on duty for lengthy periods at sea. The existence and counting of those credits are not at issue.

[4] Unfortunately, within a day of being told that he was not required on the *Hudson* and of choosing to take leave rather than being assigned to a different vessel at sea, the employer decided to assign a different staff member to the *Hudson* to perform the engineering duties that the grievor argued that he could have performed. This happened despite the grievor clearly communicating that his election of taking leave was based upon being told that there was no work available on the *Hudson*.

[5] Furthermore, when he elected to go on leave, he specifically asked to be contacted if the employer decided to staff the *Hudson*. In effect, he argued that his leave request was conditional upon the *Hudson* having no work for him and that should it change, he wished to be called back. He alleges that these events violated clause “b” of Appendix “H” of his collective agreement.

[6] While the turn of events obviously disappointed the grievor, there is no clear and compelling evidence upon which I can conclude on a balance of probabilities that a violation of the collective agreement occurred.

[7] While a call to the grievor to offer a return to the *Hudson* upon the employer’s change of mind to staff it would have been his preference, doing so was not required under the collective agreement. As such, the grievance is denied.

II. Relevant facts

[8] The collective agreement at issue in this matter was between the Treasury Board and the Canadian Merchant Service Guild for the Ships' Officers (SO) group that expired on March 31, 2018 ("the collective agreement"), in particular Appendix "H", "Lay-Day Operational Crewing System", which states this:

> *This is to confirm the understanding reached between the employer and the Canadian Merchant Service Guild with respect to the operation of vessels, or other appropriate situations where the employer deems that continuous operations are desirable, on the Lay-Day Crewing System.*
>
> *The employer shall make every reasonable effort to allow an officer the option of electing not to serve on a Lay-Day System, if the officer does so in writing.*
>
> …
>
> *Notwithstanding the provisions of the Ships' Officers collective agreement, the following conditions shall apply:*
>
> ***Lay-days***
>
> ***General***
>
> *a. Subject to operational requirements, the employer will operate the selected vessels on a Lay-Day System. Under this system, all days will be considered as working days and there will be no days of rest.*
>
> *b.* ***"Lay-day"*** *means a day off work with pay to which an officer becomes entitled by working on the Lay-Day Crewing System for a number of days. A lay-day shall be considered a part of the work cycle and as such is not considered as a day of authorized leave with pay.*
>
> *Officers will be informed of the anticipated work schedule for the operational year.* ***Officers will be notified of changes to the anticipated work schedule at the earliest possible time****. Normally, officers will receive two (2) months' notice of changes to the anticipated work schedule, with a minimum of fourteen (14) days' notice.*
>
> [Emphasis added and in the original]

[9] In rebuttal arguments, the grievor's counsel stated that the employer violated the text in clause "b" that I emphasized in bold when it failed to notify him of the *Hudson* being staffed during what would have been his shift on duty were it not for the fact that it gave him notice that he would either be assigned to a different vessel or could take leave or time off.

[10] The grievor adduced evidence in the form of several work emails, which confirm what has been stated, which was that he was advised of his work on the *Hudson* being put on hold.

[11] In one message shortly after the grievor was told there would be no work for him on the Hudson, the employer noted the fact that the repair work was nearing completion and that it was hoped that within one week, run-ups and inspections could begin to prepare the ship to return to service.

[12] It was noted that staff familiar with the ship would be required for this work. And then, within hours, other employer messages state that approval had been given to put staff back on the *Hudson* the next week and that it was looking into which engineering officers would be available.

III. The grievor's submissions

[13] In closing, the grievor argued that contrary to the employer's case, he did not choose to take leave, as he was told that there was no work for him on the *Hudson*. As work arose on the *Hudson* within hours of him being forced to choose other work or take leave, he argued that it was not a true or meaningful choice.

[14] He also noted that the employer representative who wrote the email that stated that engineering officers familiar with the *Hudson* would be assigned a week later was not called by the employer to testify and explain this with further detail, including the classification and level of engineers that were required. He added that his alternate assignment at sea was above his grade, at the 9 level, and that the position assigned for the *Hudson* when he was on leave was only at the 8 level.

[15] Thus, he questioned the employer's explanation as to the work at issue on the *Hudson* having to be assigned above his substantive grade when the employer had offered him work above his grade.

[16] The grievor's counsel provided the following written brief of her concluding arguments in this matter:

> *• Grievor was assigned to the Hudson for the year, including for the period of April 22 – May 20 with layday* [*sic*] *compensation and work schedule governed by Appendix H.*

> *• Grievor was told by employer on April 15th that Hudson would not be available for period of April 22nd to May 20 (change to the anticipated work schedule as per Appendix H, general B) and therefore only options were alternative assignment for 3 of the 4 weeks and leave in 4th week or leave for all 4 weeks*
>
> *• Employer knew on April 15th, but definitely by no later than morning of April 16th that information provided to Grievor was incorrect and his regular work on Hudson would be available for April 22 to May 20 i.e. no change to schedule necessary after all.*
>
> *• Employer did not advise Grievor of its error and return to regular schedule despite knowing that his opting to take leave was predicated on being told that Hudson was unavailable*
>
> *• Grievor was always able and willing to work on Hudson and communicated same to employer.*
>
> *• Employer, not Grievor, should bear consequences of Employer's error*
>
> *• Grievance should be upheld and grievor should be compensated for all lay days* [*sic*] *and leave used.*

[17] The grievor referred me to the following case to support his closing submissions, although both parties stated that they found no cases exactly on point with the facts in the present matter: *Association of Management, Administrative and Professional Crown Employees of Ontario (Paranuik) v. Ontario (Education),* 2021 CanLII 48239 (ON GSB)("*Paranuik*"), quoted as follows:

> …
>
> *[24] The Employer's primary position is, where an honest* bona fide *administrative error occurs the Employer is entitled to rectify that error as long as it does so promptly and there has been no detrimental reliance ….*
>
> …
>
> *[46] Finally, allowing the Employer to correct its error does not leave employees at the whim of a careless employer. The Employer is required to conduct itself honestly, in good faith, and not arbitrarily or capriciously in the exercise of its management rights. Also, the equitable doctrine of estoppel applies in the labour context and is available to hold the employer to an offer that has been accepted in a case where there has been detrimental reliance. These two concepts give an arbitrator sufficient oversight to require the Employer to act honestly, in good faith and not arbitrarily or capriciously when entering into agreements with employees, and to hold an Employer to an agreement entered into in error where there is detrimental reliance.…*

[18] The grievor also cited *Burgess v. Treasury Board (Department of Fisheries and Oceans)*, 2017 FPSLREB 20, and quoted from it as follows:

> ***52*** *According to the grievors, the employer is obliged to provide the minimum required 14 days' notice of a schedule change, and it must appropriately remedy any failure of that obligation. The appropriate remedy consists of paying officers for the difference from the required 14 days' notice. The workday includes a period of 12 hours of work. The officers are paid 6 hours per workday and accumulate a lay-day of 6 hours. A paid day (6 hours of pay and 1 lay-day equivalent to 6 paid hours) would be the compensation to replace each day missing from the minimum required 14 days' notice.*
>
> …
>
> ***66*** *I agree with the employer's position. I find that the words "normally" and "minimum" in the provision in question must be interpreted in their normal and ordinary sense. As for the word "minimum" (the "minimum" of 14 days' notice), I agree with the meaning proposed by the grievors. However, the use of the word "normally" in paragraph b clearly indicates that there will be cases in which the range of 14 days to 2 months of notice for a schedule change will not be possible. Both the English and French versions of paragraph b state that "normally", the employer gives 2 months' notice of any change to the planned schedule and a minimum of 14 days' notice. I stress the word "normally" at the beginning of the sentence (and the word* normalement *in the French version). In my opinion, the grievors' presumption that the employer can never give less than 14 days' notice is incompatible with the word "normally", used at the start of the sentence.*
>
> ***67*** *Also in my opinion, paragraph b does not create an implicit obligation to pay all ships' officers for missing days of notice — the difference from the required 14 days' notice — when exceptional circumstances arise, particularly major and unforeseen repairs to a vessel. When a vessel is immobilized due to unforeseen circumstances, a method for remedying the problem was negotiated. The memorandum of understanding on compensatory leave expressly allows compensatory leave to accumulate to cover periods when a vessel is not operational.*
>
> ***68*** *To summarize, I note that the employer must give the most notice possible when unforeseen circumstances arise. However, nobody is required to do the impossible. Indeed, when exceptional circumstances arise, it may be impossible for the employer to give the minimum of 14 days' notice. In such cases, it gives the most notice possible. But this is less than the desired 14 days.*
>
> …
>
> ***70*** *Thus, the preferred interpretation does not result in an absurdity or inconsistency with the other collective agreement provisions. Consequently, after reading all of Appendix "H" of the*

> *collective agreement, the provisions of the compensatory leave memorandum of understanding, and the operations circular OC 11-2015, I conclude that compensatory leave is accumulated to provide compensation to officers when a vessel they are to board is not operational.*

IV. The employer's reply

[19] The employer argued that the uncontradicted evidence established that the grievor was part of a pool of engineers available to staff various seagoing vessels. It noted his admission in cross-examination that he had no guaranteed assignment to a specific vessel and that he did not control or possess the particular assignment to the *Hudson*.

[20] The evidence also established that the position that the employer filled on the *Hudson* immediately after the grievor elected to take leave was at a higher grade in the engineering section.

[21] The employer noted the testimony of Kimberly Clinton, who was responsible for communications with officers related to their assignments. She stated that once she traded emails with the grievor and confirmed his choice to take leave rather then be assigned to work at sea on a different vessel, she took him off her assignment call list. She explained that once he chose to take leave, he was off her list, as other officers were on a standby list for her to contact, for other assignments.

[22] It also noted the testimony of James Webber, a senior management representative of the employer, who was responsible for staffing over 600 seagoing employees. He testified that the grievor was an MAO-5 engineer and that the position called in to be assigned work on the *Hudson* shortly after the grievor took leave was at the MAO-7 level. He also said that it is very rare for officers to be needed for a callback to work when they are on leave.

[23] I also note at this juncture that Mr. Webber admitted in cross-examination that the alternate assignment at sea that the grievor declined was indeed above his grade as an MAO-8. But he added that that assignment would have been on a smaller vessel.

[24] The employer stated that it relied upon clause 20.11 of the collective agreement, which provided that the grievor was not to be disturbed once he elected to take leave rather than a reassignment on a different vessel. That clause states this, in part:

> ***20.11 Recall from vacation leave with pay***
>
> *a. The employer shall make every reasonable effort to assign available officers in such a manner that an officer who is on vacation leave is not recalled to duty.*
>
> [Emphasis in the original]

V. Reasons

[25] In her closing arguments during the hearing, counsel for the grievor provided a helpful focus and clarity in their rebuttal submission.

[26] Counsel for the grievor argued that the employer's failure to call the grievor and inform him that it was assigning work again on the *Hudson* lacked fairness. She argued that in the exceptional circumstances that were the first few weeks of the response to the pandemic, fairness demanded the employer call the grievor when it decided that it would, in fact, call staff back to the *Hudson*.

[27] That would have allowed him to voice his preference that he had stated earlier, which was to return to work on the *Hudson* if work was available. That would have been done instead of using leave credits, which was his choice after he turned down three weeks of work at sea on a different vessel.

[28] The grievor relied upon *Paranuik*, which is an Ontario arbitration decision that relied upon common law contracts language, including "detrimental reliance" and the equitable doctrine of estoppel. I quote from it as follows:

> …
>
> *… These two concepts give an arbitrator sufficient oversight to require the Employer to act honestly, in good faith and not arbitrarily or capriciously when entering into agreements with employees, and to hold an Employer to an agreement entered into in error where there is detrimental reliance.…*
>
> …

[29] While the grievor's counsel argued forcefully about the lack of fairness in what happened to him, no evidence was adduced or cited in closing as to detrimental reliance such that I would consider such arguments to overcome what I conclude in this decision as clear collective agreement language that is determinative of this

matter. I note for clarity sake that the grievor made no submissions on the agreement containing provision for what he argued was a conditional acceptance of leave.

[30] The grievor asks for his leave to be reinstated for this period that he argues he should have been called back to work on his preferred vessel the *Hudson*.

[31] However, I have no evidence to suggest anything other than these events caused the grievor at worst, to take his leave at a time that may not have been of his own preference. This despite his electing to take the impugned leave rather than work three weeks at sea on a different vessel. I can't see this as supporting a claim that he suffered a detriment due to his reliance on the employer's direction as to his work assignment on the *Hudson*.

[32] When challenged by the employer's counsel in his closing arguments that the grievor did not allege a collective agreement violation in his closing submissions, his counsel replied in rebuttal that in fact the failure to call him back was a violation of clause "b" of Appendix "H", which states, "Officers will be notified of changes to the anticipated work schedule at the earliest possible time."

[33] While I agree that the grievor would have greatly appreciated it had management called and informed him that the *Hudson* was in fact being staffed, such that he could have chosen to return to work and not take leave, I do not agree that such was required under clause "b" of Appendix "H".

[34] I don't accept the grievor's submission that as in *Burgess*, that this case should be decided upon the notice provisions.

[35] Rather, the evidence establishes that the grievor was informed of a planned change to his staffing rotation and that he was offered other work at sea. He declined that assignment and opted to take leave.

[36] Once he made his election, clause 20.11 gave the employer an obligation to make every reasonable effort no to recall the grievor back to work.

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

(The Order appears on the next page)

VI. Order

[38] I order the grievance denied.

October 23, 2025.

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