

Date: 20100401

Files: 166-02-37673 to 37676  
and 566-02-2889, 2890 and 3123

Citation: 2010 PSLRB 50



*Public Service Staff  
Relations Act and  
Public Service Labour Relations Act*

Before an adjudicator

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BETWEEN

**SYLVAIN LATOUR, RICHARD LEBLANC, LYNE SABOURIN, LUCY PELLETIER, DENYSE  
ROCH AND CHARLES WATTIE**

Grievors

and

**TREASURY BOARD  
(Canada Border Services Agency)**

Employer

Indexed as

*Latour et al. v. Treasury Board (Canada Border Services Agency)*

In the matter of grievances referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act* and individual grievances referred to adjudication  
pursuant to section 209 of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

**Before:** Roger Beaulieu, adjudicator

**For the Grievors:** Rima Zamat, Public Service Alliance of Canada

**For the Employer:** Anne-Marie Duquette, counsel

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Heard at Ottawa, Ontario,  
February 24, 2010.  
(PSLRB Translation)

**I. Grievances referred to adjudication**

[1] At the start of the hearing, the parties, the Canada Border Services Agency (“the employer”), and Sylvain Latour, Richard Leblanc, Lyne Sabourin, Lucy Pelletier, Denyse Roch and Charles Wattie (“the grievors”), represented by the Public Service Alliance of Canada (“the Alliance”), adduced an agreed statement of facts that reads as follows:

[Translation]

**ADJUDICATION****AGREED STATEMENT OF FACTS***Grievors*

*PSLRB No: Sylvain Latour (166-02-37673 and 166-02-37674)  
Richard Leblanc (166-02-37675)  
Lyne Sabourin (166-02-37676)  
Lucy Pelletier (566-02-2889)  
Denyse Roch (566-02-2890)  
Charles Wattie (566-02-3123)*

*The Treasury Board (Canada Border Services Agency) and the Public Service Alliance of Canada agree on the following statement of facts:*

[1] *On December 12, 2003, the Governor in Council, under Order in Council P.C. 2003-2064 and in conformity with the Public Service Rearrangement and Transfer of Duties Act, transferred certain portions of the Canada Customs and Revenue Agency (CCRA) to the Canada Border Services Agency (CBSA). The CCRA is now called the Canada Revenue Agency (CRA) and has remained a separate agency appearing in Schedule V to the Financial Administration Act (FAA).*

[2] *The portions that were transferred to the CBSA included the transfer of public service employees and positions under the Public Service Employment Act. The CBSA is part of the core public administration under Schedule IV to the FAA.*

[3] *These grievances involve three collective agreements, and the language of clauses 25.27, 28 and 30 is almost the same:*

- The collective agreement of the Program and Administrative Services Group between the CCRA and the Public Service Alliance of Canada (PSAC) (expiry*

date: October 31, 2000) applied from June 23, 2000 to March 21, 2002;

- The collective agreement of the Program Delivery and Administrative Services Group between the CCRA and the PSAC (expiry date: October 31, 2003) applied from March 22, 2002 to March 13, 2005;
- The collective agreement of the Program and Administrative Services Group between the Treasury Board and the PSAC (expiry date: June 20, 2007) applied from March 14, 2005 to January 29, 2009.

[4] Sylvain Latour, Richard Leblanc, Lucy Pelletier, Denyse Roch, Lyne Sabourin and Charles Wattie were all border services officers when they filed their grievances.

[5] All the employees who filed the grievances at issue worked a designated holiday, and all worked additional hours either immediately before or immediately following their scheduled hours of work, and they did so at the request of their employer, which was either the CCRA or the CBSA. In addition, all the employees worked in positions with a variable work schedule, and consequently, they were paid for the days at issue in accordance with clause 25.27(e), which refers to article 30 of the collective agreements.

[6] Sylvain Latour (PM-02) (Grievance: 02-3921-34437) worked four (4) additional hours immediately before his scheduled hours of work on December 27 and 28, 2001. No meal allowance was paid for those two days (collective agreement of the Program and Administrative Services Group between the CCRA and the PSAC - expiry date: October 31, 2000).

[7] Sylvain Latour (PM-02) (Grievance: 04-3921-64703) worked four (4) additional hours immediately before his scheduled hours of work on December 25 and 26, 2003. No meal allowance was paid for those two days (collective agreement of the Program and Administrative Services Group between the CCRA and the PSAC - expiry date: October 31, 2003).

[8] Richard Leblanc (PM-02) (Grievance: 01-3921-65791) worked four (4) additional hours immediately before his scheduled hours of work on December 30, 2003. No meal allowance was paid for that day (collective agreement for the Program and Administrative Services Group between the CCRA and the PSAC - expiry date: October 31, 2003).

[9] Lucy Pelletier (FB-03) (Grievance: 07-3921-87898) worked four (4) additional hours immediately following her scheduled hours of work on April 9, 2007. No meal allowance

*was paid for that day (collective agreement of the Program and Administrative Services Group between the Treasury Board and the PSAC - expiry date: June 20, 2007).*

*[10] Denise [sic] Roch (PM-03) (Grievance: 06-3921-78097) worked four (4) additional hours immediately following her scheduled hours of work on April 18, 2006. No meal allowance was paid for that day (collective agreement of the Program and Administrative Services Group between the Treasury Board and the PSAC - expiry date: June 20, 2007).*

*[11] Lyne Sabourin (PM-03) (Grievance: 05-3921-73465) worked three (3) additional hours immediately before or following her scheduled hours of work in January 2005. No meal allowance was paid for that day (collective agreement of the Program and Administrative Services Group between the Treasury Board and the PSAC - expiry date: June 20, 2007).*

*[12] Charles Wattie (FB-03) (Grievance: 08-3921-96132) worked three (3) additional hours immediately following his scheduled hours of work on October 13, 2008. No meal allowance was paid for that day (collective agreement of the Program and Administrative Services Group between the Treasury Board and the PSAC - expiry date: June 20, 2007).*

*[14] [sic] All the grievances were dismissed at the final level on March 16, 2009.*

...

[2] On April 1, 2005, the *Public Service Labour Relations Act (PSLRA)*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, the grievances filed before April 1, 2005 must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C. 1985, c. P-35. Those are the Sylvain Latour (PSSRB File Nos. 166-02-37673 and 166-02-37674), Richard Leblanc (PSSRB File No. 166-02-37675) and Lyne Sabourin (PSSRB File No. 166-02-37676) grievances. The other grievances must be dealt with under the *PSLRA*. In this case, the wording of the legislation does not affect the grievances, which are about the interpretation of the collective agreement.

[3] As noted in paragraph 3 of the agreed statement of facts, the seven grievances involve three collective agreements: the collective agreement between the Canada Customs and Revenue Agency (CCRA) and the Alliance, which expired on October 31, 2000; the collective agreement between the CCRA and the Alliance that

expired on October 31, 2003; and the collective agreement for the Program and Administrative Services Group between the Treasury Board and the Alliance, which expired on June 20, 2007. It is important to note that the representatives of the parties indicated that, in this case, the adjudicator must use the wording of the collective agreement that expired on June 20, 2007, although the wording of clauses 25.27, 25.28 and 25.30 is almost the same. The only difference between the three collective agreements is found in clause 28.09. The amount of the meal allowance is now \$10.00 rather than \$9.00.

## **II. Summary of the arguments**

### **A. For the grievors**

[4] The Alliance referred me to *Julien v. Treasury Board (Canada Border Services Agency)*, 2008 PSLRB 67. The adjudicator in *Julien* allowed the grievance, and the issues, facts and articles are the same as in this case.

[5] The Alliance also adduced other relevant cases and doctrine that I have carefully reviewed.

### **B. For the employer**

[6] The main reason for the employer's refusal in this case is that clause 28.09 of the collective agreement does not apply to overtime worked under article 30. According to the employer, if the intent had been to pay a meal allowance on a designated holiday, clause 30.08 would have included a reference to clause 28.09.

[7] The employer went further in its argument, stating that, before the adjudicator's decision in *Julien*, the practice had been to not pay the meal allowance for overtime worked on a designated holiday unless the meal had been paid in error.

[8] The employer concluded its argument by stating that, had the parties desired the meal allowance to be paid for overtime on a designated holiday, provision would have been made in article 30 of the collective agreement. As an example, the parties provided for travel costs in clause 30.09.

[9] Finally, the employer and the grievors analyzed the applicable articles of the collective agreement in support of their respective positions. The following is a summary of the clauses that the parties adduced:

- (a) Article 2: “Interpretation and Definitions” and the definition “overtime” in particular.
- (b) Article 25: “Hours of Work” and clause 25.27(e) in particular, entitled “Designated Paid Holidays (clause 30.08).” The Alliance drew my attention to the need to also consult the English version of this provision and the table of contents of Part III of the collective agreement.
- (c) Article 28: “Overtime,” notably clauses 28.04(a), (b), (c) and (d) and clause 28.09.
- (d) Article 30: “Designated Paid Holidays” and especially “Work Performed on a Designated Holiday” and clause 30.08, which covers payment for work performed on designated holidays.

### **III. Reasons**

[10] The issue to be decided in this case is the same as in *Julien*, with the exception of a few details. In this case, there are seven grievances involving three collective agreements, including the one at issue in *Julien*, which expired on October 31, 2003.

[11] For the purposes of this decision, I find it useful to reproduce the following provisions of the collective agreement:

...

#### ***25.27 Specific Application of this Agreement***

...

#### ***(e) Designated Paid Holidays (clause 30.08)***

*(i) A designated paid holiday shall account for seven decimal five (7.5) hours.*

*(ii) When an employee works on a Designated Paid Holiday, the employee shall be compensated, in addition to the pay for the hours specified in sub-paragraph (i), at time and one-half (1 1/2) up to his or her regular scheduled hours worked and at double (2) time for all hours worked in excess of his or her regular scheduled hours.*

...

**28.09 Meals**

(a) An employee who works three (3) or more hours of overtime immediately before or immediately following the employee's scheduled hours of work shall be reimbursed his or her expenses for one meal in the amount of ten dollars (\$10.00) except where free meals are provided.

...

**30.09 Reporting for Work on a Designated Holiday**

(a) When an employee is required to report for work and reports on a designated holiday, the employee shall be paid the greater of:

(i) compensation equivalent to three (3) hours' pay at the applicable overtime rate of pay for each reporting to a maximum of eight (8) hours' compensation in an eight (8) hour period, such maximum shall include any reporting pay pursuant to paragraph 28.06(c);

or

(ii) compensation in accordance with the provisions of clause 30.08.

(b) The minimum payment referred to in subparagraph (a)(i) does not apply to part-time employees. Part-time employees will receive a minimum payment in accordance with clause 62.09 of this Agreement.

(c) When an employee is required to report for work and reports under the conditions described in paragraph (a) and is required to use transportation services other than normal public transportation services, the employee shall be reimbursed for reasonable expenses incurred as follows:

(i) mileage allowance at the rate normally paid to an employee when authorized by the Employer to use his or her automobile when the employee travels by means of his or her own automobile;

or

(ii) out-of-pocket expenses for other means of commercial transportation.

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

...

[12] All the grievors worked on a designated holiday and all worked overtime, either immediately before or immediately following their scheduled hours of work, and they did so at the employer's request. That situation is covered in clause 28.09(a) of the collective agreement. Therefore, the employer should have paid each of them a meal allowance, which it did not.

[13] The employer argued that, since pay for designated holidays is covered in article 30 of the collective agreement, mention of the meal allowance for overtime should also be found in that provision. It provided as an example clause 30.09, in which the parties provided for the reimbursement of employee travel expenses on designated holidays where it is not possible to use public transportation.

[14] In fact, the parties provided a specific provision for transportation, but they did so because transportation services may change on a designated holiday. That is not the case for a meal allowance paid because an employee worked overtime at the employer's request — the situation is the same, and the absence of any explicit mention to the contrary does not change the measure provided in clause 28.09(a).

[15] In *Julien*, the adjudicator concluded as follows that, had the parties desired a different regime for meals on a designated holiday, they would have said so in the collective agreement:

...

*20 The employer's reason for denying the allowance is that clause 28.09 of the collective agreement does not apply to overtime performed on a holiday because that time is paid under article 30 and not article 28. According to the employer, if the CCRA and the grievor's bargaining agent had wanted to pay the meal allowance for a holiday, a reference to clause 28.09 would have been included in clause 30.08. I do not agree. If the parties to the collective agreement had wanted to exclude payment of the meal allowance for overtime performed on a holiday, they would have made note of that in either clause 28.09 or 30.08. They did not do so.*

...

[16] I agree with that reasoning. The wording of the collective agreement appears clear to me. Employees are entitled to be paid for a meal when they work three hours



of overtime immediately before or immediately following their hours of work, whether on a regular day of work or a designated holiday. I find no indication to the contrary in the wording of the collective agreement.

[17] For all of the above reasons, I make the following order:

*(The Order appears on the next page)*

**IV. Order**

[18] I allow the seven grievances.

[19] I order the employer to pay the grievors the meal allowance specified in clause 28.09(a) of the collective agreement for the overtime worked on the dates mentioned in paragraphs 6 to 12 of the agreed statement of facts.

April 1, 2010.

PSLRB Translation

**Roger Beaulieu,  
adjudicator**