Federal Court  Cour fédérale

Date: 20100629

Docket: T-1352-09

Citation: 2010 FC 708

Ottawa, Ontario, June 29, 2010

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

**HANSON CHAN, DIANNE CHRISTINE FARKAS,
DAVID CHARLES FREEBORN, GLEN KAWAGUCHI,
DANIAL MAEHARA, THOMAS MAHON,
WILLIAM GERALD MARTIN, and MICHAL STEFAN WALNICKI**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicants seek judicial review of the decision of the Public Service Labour Relations Board (PSLRB)[1] which allowed their grievances in part. Their first set of grievances was allowed as it was held that scheduling the applicants[2] to work on both Christmas and New Year's Day was

[1] The adjudicator in this case was Mr. Nadeau who was Vice-Chair of PSLRB until his retirement in 2007-2008.
[2] The grievors in the first and second set of grievances were the same except for Mr. Mahon who did not participate in the second set of grievances and thus, should not in theory have been included as an applicant in the present proceeding.

contrary to their collective agreement. Their second set of grievances was dismissed on the ground that the employer did not violate the collective agreement when he amended the schedule and advised the applicants not to report for work on one of these two days and had no obligation to schedule one of these designated paid holidays as a day of rest.

[2] This application only relates to the second group of grievances. According to the applicants, it involves a question of interpretation of clause 30.06 of their collective agreement that has never been adjudicated before. At the hearing, it was made clear that, while the Court is only concerned with events that took place over the 2001-2002 holiday season, the interpretation of clause 30.06 is still very relevant as this provision remains in the collective agreement currently in force. For the reasons that follow, the Court concludes that the application must be dismissed.

Background

[3] The applicants were employed as Customs Inspectors in the Flexible Response Team in the Commercial Operations Division of the Canada Customs and Revenue Agency at Pearson International Airport. They were working on a variable shift schedule. At the relevant time, they were governed by the Agreement between the Canada Customs and Revenue Agency and the Public Service Alliance of Canada, signed on June 23, 2000 (the Collective Agreement).[3] They were also covered by the Variable Shift Scheduling Agreement – Local Agreement for Customs Inspectors – P.I.A., Commercial District – Secondary Cell (VSSA). This type of agreement exists in workplaces which, like Pearson International Airport, operate 24/7, 365 days per year.

[3] This Collective Agreement was applicable to the Program and Administrative Services Group of which the applicants were members.

[4] Under the VSSA, the employees are scheduled to work for 5 consecutive days followed by 3 consecutive days of rest, totaling 300 working hours over a 56-day period (8-week period). Therefore, pursuant to this variable shift schedule, they do not have fixed days of work and they may be working on week days, week-ends or on designated **paid** holidays (DPHs) listed in the Collective Agreement. The applicants' standard shift or work day was 8.57 hours.

[5] On November 13, 2001, the applicants noticed that the master schedule recently posted included working shifts on both December 25, 2001 and January 1, 2002, which are DPHs. The applicants advised their supervisor that this was contrary to clause 30.06 of the Collective Agreement which provides that subject to one exception, they should only be **scheduled to work** on one of these two DPHs in the same holiday season. They also asked that the master schedule be amended such that everyone could have either Christmas or New Year's Day as a **day of rest**.

[6] On November 21, 2001, in response to the applicants' proposal, the management asked them to choose one of these two holidays on which they would prefer to be "H'ed" on. In the agreed statement of facts filed before the PSLRB, "H'ing" (or "H'ed" or "H") was defined as follows:

> "H'ing" is the term used to describe situations in which management informs employees that their services are not required on a DPH. As such, these employees are instructed not to report for work on their scheduled shift, and are compensated for 7.5 hours.

[7] As the applicants declined to make such an election, the management "H'ed" one half of the applicants on Christmas day and the other half on New Year's Day.

[8] As a result of the above, the applicants were only paid for 7.5 hours on the day they were put on paid leave which was accounted for as a holiday and not as a day of leave.[4] As for the remaining 1.07 hours of their shift, the applicants were told that such time would have to be made up at a later date or have to be covered by annual leave.[5] A new weekly schedule was posted identifying the applicants whose working shifts had been changed to paid leave (holiday status). This was apparently the first time that the employer unilaterally changed the applicants' scheduled working shifts or work day to paid leave (see paragraph 17 of the decision).

[9] Had the applicants' scheduled shifts been changed to a scheduled day of rest on one of these dates, the applicants would not have worked on the actual date of the DPH. However, the DPH would have been moved to these employees' next scheduled work day following the day of rest, and they would have received, for the work actually performed on that day, the same amount as if they had worked on the DPH − namely, straight time for 7.5 hours plus at time and one-half (1 ½) up to his regular scheduled hours worked, namely 8.57 hours.[6]

[10] The witness appearing on behalf of the applicants before the PSLRB testified "that changing the scheduled shifts to paid leave is a practice that occurs on designated paid holidays and that,

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[4] Clauses 30.04 of the Collective Agreement and 103.08 of the VSSA.
[5] A separate set of grievances was filed in this respect. However, it appears from the decision in *Guérin v. House of Commons*, [1994] C.P.S.S.R.B. No. 55 (QL) *(Guérin*) that the employer could however put the employees on leave or not call them to work on that deemed date of their DPH.
[6] Clauses 30.05(a), 30.07(b) and 25.27(e) of the Collective Agreement.

when an employee asks for that change, the person stays home, gets paid for 7.5 hours and requests annual leave for the period in excess of 7.5 hours. She confirmed that she could have asked the employer to stay home. Before 2001, the employer never requested changing scheduled shifts to paid leave" (paragraph 20 of the decision).

[11] Several sets of grievances resulted from these events, only two of which were dealt with in the decision under review. As mentioned, the first set of grievances before the decision-maker is not relevant to the present application for it was not challenged in the Notice of Application[7] (see page 3 of the applicants' Record). In the set of grievances of interest here, the decision-maker did not accept the allegations that the employer acted contrary to clauses 1.01, 1.02, 18.22[8], 25.20 and 30.06[9] of the Collective Agreement when it informed the applicants not to report to work for one of their originally scheduled shifts instead of changing their scheduled shift on December 25, 2001 or January 1, 2002 to a scheduled day of rest and rescheduling an existing day of rest as a working day.

[12] Because the issues relevant to the first and second set of grievances are intermingled in the decision (as they were in the arguments), it is not easy to distinguish the findings relevant to the

[7] This was reconfirmed at the hearing.
[8] As it appears from the impugned decision, at paragraph 43, the grievors abandoned the allegation that the employer failed to comply with clause 18.22 of the Collective Agreement (Intimidation and Threats) and no argument was raised before this Court in respect of clause 25.20. There is no evidence that the notice of the change was late as it was the case in the matter involving Mr. Clarkson discussed in paragraph 15 of these reasons.
[9] There is no mention in the decision or in the grievances found in the applicants' Record of clause 25.27(e) which was heavily relied upon by the applicants before this Court.

grievances under review. The parties focused their arguments on the following passage where the PSLRB said[10]:

> **59** Counsel for the grievors contends that the employer should have changed their scheduled shifts to days of rest. However, the collective agreement defines a "day of rest" as a day, other than a holiday, on which an employee is not ordinarily required to perform the duties of his or her position and a "holiday" as the 24 hours of a day designated as a paid holiday. Since December 25 and January 1 are defined as designated paid holidays in clause 30.02 of the collective agreement, they cannot be days of rest. Not scheduling an employee to work on a designated paid holiday does not transform that holiday into a day of rest.
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> **60** If the parties to the collective agreement had intended to provide that a designated paid holiday is considered a day of rest, they would have expressly provided so. The fact that clause 30.05 of the collective agreement provides for moving a designated paid holiday when it coincides with a day of rest further supports the view that the two concepts are mutually exclusive. Furthermore, the fact that clause 30.05 specifies that a moved designated paid holiday shall take precedence over an employee's day of leave with pay is another example of a specific outcome provided in the collective agreement.
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> **61** […] I am also of the view that the employer has no obligation to transform a designated paid holiday into a day of rest. A designated paid holiday is a form of paid leave; it is not a day of rest.

[13] The applicants submit that the PSLRB misconstrued the Collective Agreement, particularly the impact of clause 30.06, the definition of a "day of rest" and the nature of a DPH ("form of paid leave").

[10] Paragraph 58 of the decision deals more specifically, in my view, with the redress to be granted in respect of the first set of grievances.

[14] In their Memorandum of Fact and Law, the applicants framed the issue to be determined as follows:

> Did the adjudicator err in his interpretation and application of the collective agreement, specifically in respect of his determination that the employer corrected its violation of Article 30.06 by placing the Applicants on holiday status rather than by amending their schedules to make December 25, 2001 a day of rest?
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> [Emphasis added]

However, as mentioned, the only violation of clause 30.06 accepted by the PSLRB was in the context of the first set of grievances[11] as was its determination of whether or not such violation was properly corrected.[12] In respect of the second set of grievances, there had first to be a violation of the Collective Agreement before one had to determine what is the proper measure of damages or compensation necessary to correct such violation. The PSLRB did not deal with this last question in respect of the grievances under review.

[15] Hence, at the beginning of the hearing before this Court, it was made clear that the question that is the subject of the present review was:

> Did the employer violate the terms of the Collective Agreement when it instructed the applicants not to report to work on either December 25, 2001 or January 1, 2002 and scheduled such shift or day as paid leave instead of as a day of rest?

This distinction between the issue as framed by the applicant and the issue as reformulated by the Court is to be kept in mind when one considers the applicants' submissions (particularly in their

[11] Scheduling the applicants for work on both December 25, 2001 and January 1, 2002.
[12] Thus, the Court's findings here should not be construed as implicitly endorsing the decision of the PSLRB in respect of what redress or damages resulted from the violation of that set of grievances.

Memorandum) and authorities such as *Nitschmann v. Canada (Treasury Board)*, 2009 FCA 263, 394 N.R. 126 (*Nitschmann*) and *Clarkson v. Treasury Board*, 2009 PSLRB 87, [2009] C.P.S.L.R.B. No. 87 (QL) (*Clarkson*). In *Nitschmann*, the employer had conceded that the change of schedule in that case was in breach of the collective agreement and the issue dealt with by the Federal Court of Appeal was what damages were payable as a result of that breach (see paragraphs 10, 18 and 19). In *Clarkson*, described as a companion case (heard at the same time by the same adjudicator) despite evident and material differences, the PSLRB found that there was a violation of the collective agreement[13] when the employer changed the scheduled shift of Mr. Clarkson to an "involuntary" paid leave only because it was done without proper notice. It was not even argued in that case that the employer did not have the right to "H" Mr. Clarkson[14]. There is also nothing contradictory in the statements made therein[15] with respect to the value of a DPH as this was done in the context of a grievance similar[16] to the ones filed by the applicants in respect of the remaining 1.07 hours of their original shift (see paragraph 8 and footnote 3 above).

[16] The relevant statutory provisions and clauses of the Collective Agreement are reproduced in Schedule A. While it is the Court's practice to include the French and English versions of all relevant provisions, the French version of the Collective Agreement was not filed by the parties. However, the French version of the decision under review includes the French text of some of the most relevant ones such as clause 30.06. Thus, these are also reproduced in Schedule A. The Court

[13] Covering a different period of time.
[14] In 2004, it appears that this was a practice of the employer, see paragraph 1 of the decision.
[15] However, the Court notes that in paragraphs 57 to 59 of their Memorandum, the applicants appear to rely on the *Clarkson* decision to challenge the decision of adjudicator Nadeau in respect of the first set of grievances, more particularly his statements as to whether or not the violation he held had occurred had been duly corrected or not.
[16] It is not clear if there was a clause in the applicable VSSA similar to 103.08 referred to earlier but the PSLRB held that the employee was entitled to the payment of all his originally scheduled hours (in this case, 11.5 hours).

notes that it would be a good practice to include both versions when interpretation of a provision of the Collective Agreement is at issue. Here, it would have been particularly useful to hear arguments on the French text which appears to support the interpretation adopted by the PSLRB. That said, the Court was able to reach its decision without any reference to the said text.

Analysis

[17] The parties agreed that the applicable standard of review is that of reasonableness. The substance of the PSLRB's decision was the interpretation and application of the Collective Agreement to the facts of the grievances. It is now well-settled that such issue falls within the purview of the PSLRB's expertise and calls for deference of the reviewing court: *Public Service Alliance of Canada v. Canada (Canadian Food Inspection Agency)*, 2005 FCA 366, 343 N.R. 334 at para. 18; *Currie v. Canada (Customs and Revenue Agency)*, 2005 FC 733, 139 A.C.W.S. (3d) 869 at paras. 12-13, rev'd on other grounds 2006 FCA 194, [2007] 1 F.C.R. 471 at para. 20; *Nitschmann v. Canada (Treasury Board)*, 2008 FC 1194, 171 A.C.W.S. (3d) 123, var'd on other grounds 2009 FCA 263, 394 N.R. 126. Therefore, the Court must determine whether the PSLRB's decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47.

[18] The applicants argue that article 30 (and clause 25.27(e)) is a comprehensive code as to how DPHs must be treated under the Collective Agreement. As there is no provision authorizing the employer to schedule them to be on paid leave, the employer simply has no authority to proceed this

way[17]. In their view, the regime established by the Collective Agreement and the VSSA taken together requires that all days including December 25 and January 1 be included in the 56-day schedule either as work days or days of rest. Article 30 and clause 25.27(e) are meant to ensure that VSSA employees are compensated for every DPH, regardless of whether the actual date of holiday falls on a scheduled work shift or a day of rest.

[19] Thus, according to the applicant, given that here, the employer could not legitimately schedule them to work on both December 25, 2001 and January 1, 2002 [18], the only option that remained open to the employer was to schedule the applicants to be on a day of rest.

[20] In the same vein, they say that the notion of paid leave (holiday status) necessarily implied that one was scheduled to work on that date; again, this would be contrary to clause 30.06 in the present circumstances.

[21] For the applicants, the definition of a "day of rest" relied upon by the PSLRB exists to ensure that DPHs are accorded treatment that is different from Saturdays and Sundays for regularly scheduled employees or for any days scheduled as days of rest for VSSA employees. They further submit that clause 30.05(a) clearly sets out the relationship between a DPH and a day of rest. In any event, the applicants note that although the definition of a "day of rest" and clause 30.05(a) **may** preclude a day of rest from being deemed a holiday, they do not prevent a holiday from being scheduled either as a work day or a day of rest.

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[17] No case law was filed to support this position which appears contrary to the one taken in cases cited by the employer.
[18] Pursuant to clause 30.06 and the conclusion reached in the decision of the PSLRB on the first set of grievances.

[22] It is worth noting that the arguments of the applicants before the PSLRB appear to have been slightly different from those presented to the Court. Particularly, in paragraph 55 of the decision in the summary of the grievors' rebuttal, one finds that the applicants argued that:

> […] If the employee is not scheduled to work **and is not on annual leave or on another type of leave**, the employer has to place the employee on a day of rest.
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> [Emphasis added]

[23] This may well explain why the decision-maker − who writes for the parties − said that a DPH is "a form of paid leave".

[24] It is also worth noting that, in paragraph 53 of the decision, it is stated that:

> 53 Counsel for the grievors indicated that the decisions quoted by counsel for the employer dealt with whether the practice of changing scheduled shifts to paid leave was unlawful under the collective agreement. Those decisions dealt with the question of whether a shift schedule is a contractual obligation and whether employees have an unfettered right to work. **That is not the case here**.
>
> [Emphasis added]

[25] When reading paragraphs 53 and 55 of the decision together, it appears that the only point made before the PSLRB was that, in this case, the employer could not exercise what is normally[19] part of its managerial functions (unilaterally schedule a paid leave) in respect of the two specific DPHs referred to in clause 30.06 because this provision limits its power to schedule employees to work. One could say that implicitly, in respect of the other DPHs, the employer's right to do so was not challenged.

[26] This is somewhat different than the complete code argument[20] put forth before me and in respect of which no case law was submitted. Here again, it may explain why there is no discussion of that argument in the decision.

[27] That said, before me the respondent vigorously disagreed with the view put forth by the applicants, both as a general principle and more particularly, in the context of this instance where article 6 of the Collective Agreement makes it very clear that the managerial responsibilities of the employer remain unrestricted except as provided therein.

[28] Certainly, there was no dispute before me that normally, unless restricted by statute or by the collective agreement, an employer has the right to unilaterally schedule a paid leave as part of its managerial functions[21] (*P.S.A.C. v. Canada (Canadian Grain Commission)*, [1986] F.C.J. No. 498

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[19] When such authority is not restricted by statute or collective agreement.
[20] The applicants advised the Court should rule without considering part IV of the Collective Agreement which deals only with leave provisions.
[21] At the hearing, counsel for the applicants simply submitted that sections 7 and 11.1 of the *Financial Administration Act*, R.S.C. 1985, c. F-11 should not be construed as being the embodiment of a "divine power" but rather as simply providing the authority to act as an employer to the Treasury Board. The applicants relied on *P.S.A.C. v. Canada*

(F.C.) (QL); *Peck v. Parks Canada*, 2009 FC 686, [2009] F.C.J. No. 1707 at para. 37 (QL); *Brescia v. Canada (Treasury Board)*, 2005 FCA 236, 255 D.L.R. (4th) 334 at para. 50, *Shaw v. Canadian Food Inspection Agency*, 2009 PSLRB 63, [2009] C.P.S.L.R.B. No. 63 (QL)).

[29] Finally, the applicants did not challenge the following principles discussed in some of the cases cited:

- Employees have no vested right to work on a DPH so as to benefit from the DPH premium pay and this includes actually working on the date of the DPH or on the deemed date of the DPH[22] (for example, if the DPH falls on a day of rest).
- The purpose of DPHs was described as follows in *Empson and Treasury Board* (Board file 166-2-319)[23]:

> The purpose of paid holiday provisions is to regularize and humanize the employee's working life so that he can spend time with his family or friends when they, too, are free of working obligations - usually on general public holidays - without the economic disincentive of lost pay. Thus, so far as possible, the rule should be that no work should be done on a holiday. However, especially in the public sector, it is inevitable that some employees will have to work on a holiday. For these employees, who have lost the advantage enjoyed by all others, special compensatory premiums have been provided. These

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(Treasury Board), [1987] 2 F.C. 471, 72 N.R. 241 (F.C.A.) and *P.S.A.C. v. Canada (Treasury Board)*, [1987] F.C.J. No. 240 (F.C.A.) (QL). The Court reviewed these cases but it is unclear how they support the applicants' position. In fact, these two cases pertain to the jurisdiction of the Public Service Staff Relations Board to arbitrate certain matters in collective bargaining disputes and interpret the scope of another provision, namely section of the *Public Service Staff Relations Act*, R.S.C. 1970, c. P-35.

[22] *Toomey and Treasury Board (Transport Canada)*, [1992] C.P.S.S.R.B. No. 57 (QL); *Guérin*. In both these cases which involved employees working on various shift schedules, the employer had assigned no hours of work on the day the employees would normally have expected the deemed DPH to fall on. This was held to be within the scope of the employer's managerial power.

[23] Adopted in *Guérin,* above.

> premiums are deliberately scaled up to punitive dimensions so that the employer will not be tempted to lightly intrude on the employees' holidays and simply pay regular rates or some slight surcharge. Clause 21.05, for example, provides that an employee who works on a holiday will receive, in effect, the equivalent of 2 1/2 days' pay. The whole purpose of the agreement would be undercut if paid holidays were viewed as an inducement to work rather than rest, and if the punitive premiums were treated as a monetary windfall to be sought after rather than as a meagre recompense for personal dislocation.

[30] It was also agreed at the hearing that subject to a specific exception or provision, all employees covered by a particular provision in the Collective Agreement should be treated equally.

[31] As discussed during the hearing, whenever a service can be suspended on a DPH, the employer puts everybody on holiday status. On such days, the employees are paid as though it is a regular scheduled work day.

[32] Hence, what is at issue here is really whether an employer who cannot completely close its business or stop providing services because it operates on a 24/7, 365 days basis can nevertheless take a similar approach by “H’ing” one or several employees, in order to act in accordance with clause 30.02.

[33] It appears that the PSLRB did not accept the applicants’ interpretation that the days on which they could not be scheduled to work could only appear in their 56-day schedule as days of

rest or days of work[24]. This can be inferred from the fact that, having agreed that they could not be scheduled to work on both of these days in the first set of grievances, the decision-maker clearly concluded that there was no obligation in the Collective Agreement for the employer to schedule one of these days as a day of rest.

[34] Obviously, this premise is an essential element of the reasoning relied upon by the applicants. It may well be one of the possible interpretations of the Collective Agreement and the VSSA read together but, in my view, it is not the only one that was open to the decision-maker. Thus, the Court cannot simply substitute its own view whatever it may be.

[35] The decision-maker clearly adopted a contextual approach looking at relevant definitions and the other clauses of article 30.

[36] These can support the view adopted that the DPH is a concept quite distinct from a day of rest.[25] Not only is a DPH expressly excluded from the definition of a day of rest, but as noted by the PSLRB, article 30 does provide for situations where:

- the DPH coincides with a day of paid leave[26] (clause 30.04 and also 30.03 in the context of absence without pay)

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[24] In that respect, the Court notes that the applicants never explained how the VSSA's requirement that there be 3 consecutive days of rest would work if the employer was to schedule as they had proposed. There was no discussion for example of clause 25.13 (d) of the Collective Agreement.

[25] In fact, it is also distinct from a day of leave or a day of work.

[26] Leave is an expression defined in the Collective Agreement simply as an "authorized absence **from duty** by an employee during his or her regular or normal hours of work (congé)" [Emphasis added].

- the DPH coincides with a day of rest (clause 30.05)

[37] Other than by implication under clauses 30.02 and 30.04, there is no specific clause dealing with when a DPH coincides with a scheduled work day[27].

[38] In effect, if for example, as argued by the applicants, one needs to have been originally scheduled to work to be on leave (see definition in footnote 24), clause 30.04 would support the view that a DPH could have been originally scheduled as a working day.

[39] Clause 30.06 is in a section entitled "Work Performed on a Designated Holiday" which deals mostly with compensation for actual work performed when one is **required** to show up for work on such days.

[40] It is also not unreasonable to construe "schedule an employee to work" in clause 30.06 in accordance with its context as meaning scheduled to actually work as opposed to being scheduled to work but on paid leave (clause 30.04), or put another way, not called or required to work.

[41] The applicants said that the conclusions reached by the decision-maker are against the spirit of the Collective Agreement. Having considered the text and the authorities in respect of the intent

[27] Contrary to "day of rest" and "leave", the expression "scheduled work day" is not defined in the Collective Agreement, however one finds the expression "work day" at clause 25.06 of the Collective Agreement and article 102 of the VSSA, work day is simply defined as meaning a period of 8.57 hours exclusive of a meal period.

of DPH provisions, it is not unreasonable to construe the Collective Agreement as providing that DPHs are to be enjoyed by all, regardless of how these days are described in one's schedule. If one was on leave that day[28], time will not be deducted from his leave bank; if one was on a day of rest, he will have an extra day to be with his friends or family; and if one was supposed to work, he will be on holiday and will receive an amount equal to his regular working hours pay. Except for Christmas and New Year in the same holiday season, none of this prevents the employer from actually requiring employees to work on a DPH. If he does so, it will be at a dear cost; the employer must pay a high premium for personal dislocation.

[42] In view of the foregoing, the applicants have not persuaded me that the PSLRB made a reviewable error when it concluded that clause 30.06, which indicates that an employee shall not be scheduled to work on a DPH, does not transform that holiday into a day of rest, nor does it create an obligation for the employer to account for it in the 56-day schedule as a day of rest.

[43] The conclusion reached by the PSLRB is one of the possible and acceptable outcomes on the facts and the law in this case.

[44] The application is dismissed with costs. The parties agreed that a lump sum of $3,000.00, inclusive, would be reasonable.

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[28] During the hearing, the parties informed the Court that **at least** 7.5 hours are taken into account as working hours for the purpose of calculating the 300 hours per 8-week schedule in clause 103.01(a) of the VSSA.

ORDER

THIS COURT ORDERS that:

1. The application is dismissed; and
2. The respondent is awarded costs in the amount of $3,000.00 (all inclusive, including tax).

"Johanne Gauthier"
Judge

Schedule A

1. Relevant statutory provisions

- *Financial Administration Act*, R.S.C. 1985, c. F-11

7. (1) The Treasury Board may act for the Queen's Privy Council for Canada on all matters relating to […]	**7.** (1) Le Conseil du Trésor peut agir au nom du Conseil privé de la Reine pour le Canada à l'égard des questions suivantes : […]
(*e*) human resources management in the federal public administration, including the determination of the terms and conditions of employment of persons employed in it;	*e*) la gestion des ressources humaines de l'administration publique fédérale, notamment la détermination des conditions d'emploi;
11.1 (1) In the exercise of its human resources management responsibilities under paragraph 7(1)(*e*), the Treasury Board may (*a*) determine the human resources requirements of the public service and provide for the allocation and effective utilization of human resources in the public service; […] (*c*) determine and regulate the pay to which persons employed in the public service are entitled for services rendered, the hours of work and leave of those persons and any related matters; […] (*j*) provide for any other	**11.1** (1) Le Conseil du Trésor peut, dans l'exercice des attributions en matière de gestion des ressources humaines que lui confère l'alinéa 7(1)*e*) : *a*) déterminer les effectifs nécessaires à la fonction publique et assurer leur répartition et leur bonne utilisation; […] *c*) déterminer et réglementer les traitements auxquels ont droit les personnes employées dans la fonction publique, leurs horaires et leurs congés, ainsi que les questions connexes; […] *j*) régir toute autre question,

matters, including terms and conditions of employment not otherwise specifically provided for in this section, that it considers necessary for effective human resources management in the public service.

notamment les conditions de travail non prévues de façon expresse par le présent article, dans la mesure où il l'estime nécessaire à la bonne gestion des ressources humaines de la fonction publique.

2. Collective Agreement[29]

ARTICLE 1
PURPOSE AND SCOPE OF AGREEMENT

1.01 The purpose of this Agreement is to maintain harmonious and mutually beneficial relationships between the Employer, the Alliance, and the employees and to set forth herein certain terms and conditions of employment for all employees of the Employer described in the certificates issues by the Public Services Staff Relations Board on:

- June 7, 1999, for the Program and Administrative Services Group.
- June 10, 1999, for the Technical Services Group.
- June 16, 1999, for the Operational Services Group.
- June 7, 1999, for the Education and Library Science Group.

1.02 The parties to this

ARTICLE 1
OBJET ET PORTÉE DE LA CONVENTION

1.01 La présente convention a pour objet d'assurer le maintien de rapports harmonieux et mutuellement avantageux entre l'Employeur, l'Alliance et les employé-e-s et d'énoncer certaines conditions d'emploi pour tous les employé-e-s décrits dans les certificats émis par la Commission des relations de travail dans la fonction publique le :

- 7 juin 1999, pour le groupe Service des programmes et de l'administration;
- 10 juin 1999, pour le groupe Services techniques;
- 16 juin 1999, pour le groupe Services de l'exploitation;
- 7 juin 1999, pour le groupe Enseignement et bibliothéconomie.

1.02 Les parties à la présente

[29] Clauses which were not reproduced in their French version in the decision of the PSLRB are marked with an asterisk (*).

Agreement share a desire to improve the quality of the Public Service of Canada and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and efficiently served. Accordingly, they are determined to establish, within the framework provided by law, an effective working relationship at all levels of the Public Service in which members of the bargaining units are employed.

convention ont un désir commun d'améliorer la qualité de la fonction publique du Canada et de favoriser le bien-être de ses employé-e-s ainsi que l'accroissement de leur efficacité afin que les Canadiens soient servis convenablement et efficacement. Par conséquent, elles sont déterminées à établir, dans le cadre des lois existantes, des rapports de travail efficaces à tous les niveaux de la fonction publique auxquels appartiennent les membres des unités de négociation.

ARTICLE 2
INTERPRETATION AND DEFINITIONS

2.01 For the purpose of this Agreement:

[…]

"day of rest" in relation to a full-time employee, means a day other than a holiday on which that employee is not ordinarily required to perform the duties of his or her position other than by reason of the employee being on leave or absent from duty without permission (jour de repos)

[…]

"holiday" (jour férié) means:

(i) the twenty-four (24)-hour period commencing at 00:01 hours of a day designated as a paid holiday in this Agreement,

[…]

ARTICLE 2
INTERPRÉTATION ET DÉFINITIONS

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

[…]

« jour de repos » désigne, par rapport à un employé-e à temps plein, un jour autre qu'un jour férié où un employé-e n'est pas habituellement tenu d'exécuter les fonctions de son poste pour une raison autre que le fait qu'il ou elle est en congé ou qu'il ou elle est absent de son poste sans permission. (day of rest)

[…]

« jour férié » (holiday) désigne :

(i) la période de vingt-quatre (24) heures qui commence à 0 h 01 un jour désigné comme jour férié payé dans la présente convention,

[…]

“leave” means authorized absence from duty by an employee during his or her regular or normal hours of work (congé)

« congé » *

ARTICLE 6
MANAGERIAL RESPONSIBILITIES

6.01 Except to the extent provided herein, this Agreement in no way restricts the authority of those charged with managerial responsibilities in the Public Service.

[…]

ARTICLE 6*

ARTICLE 18
GRIEVANCE PROCEDURE

18.22 No person who is employed in a managerial or confidential capacity shall seek by intimidation, by threat of dismissal, or by any other kind of threat to cause an employee to abandon his or her grievance or refrain from exercising his or her right to present a grievance as provided in this Agreement.

[…]

ARTICLE 18
PROCÉDURE DE RÈGLEMENT DES GRIEFS

18.22 Il est interdit à toute personne occupant un poste de direction ou de confiance de chercher, par intimidation, par menace de renvoi ou par toute autre espèce de menace, à amener l’employée à renoncer à son grief ou à s’abstenir d’exercer son droit de présenter un grief, comme le prévoit la présente convention.

ARTICLE 25
HOURS OF WORK

[…]

25.16 The Employer shall set up a master shift schedule for a fifty-six (56) day period, posted fifteen (15) days in advance,

ARTICLE 25
DURÉE DU TRAVAIL

[…]

25.16 L’Employeur établit un horaire général des postes portant sur une période de cinquante-six (56) jours et

which will cover the normal requirements of the work area.
[…]

25.20 Sub-clauses (a) and (b) apply to the employees in the Program and Administration Services Group only. See alternate provisions for other employees.

(a) An employee who is required to change his or her scheduled shift without receiving at least seven (7) days' notice in advance of the starting time of such change in his or her scheduled shift, shall be paid for the first shift worked on the revised schedule at the rata of the time and one-half (1 1/2) for the first seven and one-half (7 1/2) hours and double time thereafter. Subsequent shifts worked on the revised schedule shall be paid for at straight time, subject to Article 28, Overtime.
[…]

25.27 Specific Application of this Agreement

(e) Designated Paid Holidays (clause 30.08)
(i) A designated paid holiday shall account for seven and one-half (7 ½) hours.

(ii) When an employee works on a Designated Paid Holiday, the employee shall be

l'affiche quinze (15) jours à l'avance; cet horaire doit répondre aux besoins normaux du lieu de travail.
[…]
25.20 Les sous-paragraphes (a) et (b) ne s'appliquent qu'aux employé-e-s du groupe Services des programmes et de l'administration. Voir les dispositions de dérogation pour les autres employé-e-s.

(a) L'employé-e qui ne reçoit pas un préavis d'au moins sept (7) jours portant modification de son poste à l'horaire est rémunéré au tarif et demi (1 ½) pour les sept premières heures et demie (7 ½) et à tarif double par la suite pour le travail exécuté au cours du premier poste de l'horaire modifié. Les postes subséquents exécutés d'après le nouvel horaire sont rémunérés au tarif normal, sous réserve de l'article 28, Heures supplémentaires.

[…]

25.27*

compensated, in addition to the pay for the hours specified in subparagraph (i), at time and one-half (1 ½) 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.
[…]

ARTICLE 30
DESIGNATED PAID HOLIDAY

30.02 Subject to clause 30.03, the following days shall be designated paid holidays for employees:

(a) New Year's Day, […]
(i) Christmas Day,
[…]

30.03 An employee absent without pay on both his of her full working day immediately preceding and his or her full working day immediately following a designated holiday is not entitled to pay for the holiday, except in the case of an employee who is granted leave without pay under the provisions of Article 14, Leave With or Without Pay for Alliance Business.

30.04 Designated Holiday Coinciding With Day of Paid Leave
Where a day that is a designated holiday for an employee coincides with a day of leave with pay, that day shall count as a holiday and not as a day of

ARTICLE 30
JOURS FÉRIÉS PAYÉS

30.02 Sous réserve du paragraphe 30.03, les jours suivants sont désignés jours fériés désignés payés pour les employé-e-s:
(a) le jour de l'An, […]
(i) le jour de Noël,
[…]

30.03 *

30.04 *

leave.
[…]

30.05 Designated Holiday Coinciding With a Day of Rest
(a) When a day designated as a holiday under clause 30.02 coincides with an employee's day of rest, the holiday shall be moved to the first scheduled working day following the employee's day of rest. When a day that is designated holiday is so moved to a day on which the employee is on leave with pay, that day shall count as a holiday and not as a day of leave.
[…]

30.05 Jour férié coïncidant avec un jour de repos
(a) Lorsqu'un jour désigné jour férié en vertu du paragraphe 30.02 coïncide avec un jour de repos de l'employé-e, il est reporté au premier jour de travail à l'horaire de l'employé-e qui suit son jour de repos. Si l'employé-e est en congé payé, le jour auquel est reporté le jour férié, ce jour est compté comme un jour férié et non comme un jour de congé.
[…]

Work Performed on a Designated Holiday
30.06 Where operational requirements permit, the Employer shall not schedule an employee to work both on December 25 and January 1 in the same holiday season.

Travail accompli un jour férié

30.06 Sous réserve des nécessités du service, l'Employeur ne demande pas à l'employé-e de travailler le 25 décembre et le 1er janvier pendant le temps des Fêtes.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1352-09
STYLE OF CAUSE:	HANSON CHAN, DIANNE CHRISTINE FARKAS, DAVID CHARLES FREEBORN, GLEN KAWAGUCHI, DANIAL MAEHARA, THOMAS MAHON, WILLIAM GERALD MARTIN, and MICHAL STEFAN WALNICKI v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	June 2, 2010
REASONS FOR ORDER AND ORDER:	GAUTHIER J.
DATED:	June 29, 2010

APPEARANCES:

Mr. Andrew Raven	FOR THE APPLICANTS
Mr. Richard Faden	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Andrew Raven Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l.	FOR THE APPLICANTS
Myles J. Kirvan Deputy Attorney General of Canada	FOR THE RESPONDENT