

IN THE MATTER OF AN ARBITRATION

BETWEEN:

**THE MINISTER RESPONSIBLE FOR THE PUBLIC SERVICE
(GOVERNMENT OF THE NORTHWEST TERRITORIES)**

Employer

-and-

THE UNION OF NORTHERN WORKERS

Union

**POLICY GRIEVANCE RE: OVERTIME CLAIMS
GRIEVANCE 07-P-00396**

BEFORE: JOHN MOREAU QC

FOR THE EMPLOYER:

Karen Lajoie	Counsel
Jami Semenoff	Senior Labour Relations Advisor
Deborah Ross	Labour Relations Coordinator

FOR THE UNION:

John Haunholter	Counsel
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DATE OF HEARING: November 13, 2012

DATE AWARD ISSUED: January 10, 2013

HEARING LOCATION: Yellowknife, N.W.T.

AWARD

Introduction:

The Union claims that an overtime policy introduced by the Employer in March 2007 requiring employees to submit their overtime forms within four weeks of the overtime work being performed, failing which the overtime will not be processed, is a breach of the collective agreement. The Employer disagrees and asks that the grievance be dismissed.

Agreed Statement of Facts

1. In a letter dated March 13, 2007, the Employer provided notification to the Union of its intent to notify all employees of their obligations with respect to the timely submission of overtime.
2. On March 14, 2007, the GNWT Messenger Service sent an email notification to all employees notifying them of their obligation with respect to the timely submission of overtime.
3. On April 26, 2007, the Union grieved the Employer's policy regarding the timely submission of overtime.
4. In a May 23, 2007, letter the Employer responded to the Union's April 26, 2007 letter denying the grievance.
5. On June 28, 2007, the Union referred grievance 07-P-00396 to Arbitration.
6. The relevant Article of the Collective Agreement are:

Article 23.02: An employee who is required to work overtime shall be paid overtime compensation for each completed fifteen (15) minutes of overtime worked by him/her subject to a minimum of one (1) hour at the overtime rate when:

- (a) The overtime work is authorized in advance by the Employer, except when employees are required to work in isolated settlements, in which case the Employer must make arrangements for the authorization of overtime prior to the employee's dispatch to an isolated settlement.

(b) The employee does not control the duration of the overtime work.

Article 23.03 Employees shall record starting and finishing times of overtime worked on a form determined by the Employer.

7. The relevant clauses in the Financial Administration Manual include:

Section 12 of the *Financial Administration Act (FAA)* gives the Comptroller General the authority to establish accounting controls. Accounting controls are to ensure that the following objectives are satisfied.

- transactions are recorded accurately in the system;
- transactions are recorded at the appropriate value;
- only properly authorized transactions are input and accepted by the system;
- Transactions are recorded in the proper period (i.e. fiscal year, month, quarter);
- Only valid transactions are recorded into the system, representing real transactions;
- All valid transactions are recorded in the system;
- Sufficient documentation is retained to substantiate recorded transactions and are verifiable for audit;
- The components of transactions are appropriately allocated and classified to the proper financial statement items (i.e. assets, liabilities, accumulated surplus, revenues, expenses, gains or losses).

8. The April 2007, section of the Human Resource Manual (609 – Lieu time), clause 15 states:

“All overtime worked, including hours taken in lieu, must be entered into PeopleSoft self-service or submitted on time sheets within four weeks from the date the overtime was worked. Hours entered after the four-week period will not be paid, except in exceptional circumstances...”

9. To date, the Employer has not denied payment to an employee who was approved to work overtime.

“John T. Haunholter”

On behalf of the UNW, per PSAC

November 13, 2012

“Karen Lajoie”

On behalf of the GNWT

November 13, 2012

Submissions of the Union

The Union reviewed all the documents referenced in the agreed facts including: the Collective Agreement, the Financial Administration Manual and the Human Resource Manual.

The Union first focused on the contents of the March 13, 2007 policy correspondence, in particular where it states (p.1, paragraph 3): "Saved overtime submitted after March 30, 2007 will not be paid". Counsel noted there is no provision in the *Public Service Act* which permits the Employer to withhold payment for overtime work. Indeed, although the *Public Service Act* permits the Employer to require an employee to work overtime [s. 10 (1)], it also states that "Employees shall be paid for overtime in the month following the month in which the overtime was worked" [s.10(4)]. Any unpaid overtime therefore must be viewed as another debt owing by the Employer to the employee. The passage of time does not forgive the debt. Similarly, the Union takes exception for the same reason to the assertion by the Employer in the policy (p.2, paragraph 1): "Overtime submitted more than four weeks after it has been worked, will not be processed."

The Union also noted that article 23.03 of the Collective Agreement states that: "Employees shall record starting and finishing times of overtime worked on a form determined by the Employer". There is no time constraint specified in the provision for submitting the form. There is also no time restriction for submitting the form set out in article 24.03:

Employees who have earned overtime compensation or any other extra allowances in addition to their regular pay shall receive such remuneration in the four weeks following the day the employee submits the appropriate form.

The Union further submits that the four week time period for submitting the form is unreasonable given the nature of the work being undertaken in the North and the dynamics of the Northern workforce. Counsel for the Union cited numerous examples where the four-week timeframe for filing the form could be problematic: when a technical glitch occurs as a result of problems with the "PeopleSoft" (self-service) computer software; where an employee works overtime just prior to leaving on annual vacation; medical incapacity; where an employee works in a remote area and has no ability to submit a form to his supervisor; where forms are mislaid at the Employer's end; where language proves a barrier to completion of the form.

Finally, the Union argues that any failure to submit an overtime form should not be considered a disciplinary matter.

In the end, the Union acknowledges that the Employer is within its rights to initiate an overtime policy. But the Employer cannot exceed that management right by denying an employee the fundamental right to be paid for overtime work that has been pre-approved by the Employer.

Submissions of the Employer

The Employer submits that the four-week timeframe is not on its face an unreasonable period of time for submitting an overtime form. Indeed, counsel noted that the policy dates back some 5 ½ years and there have been no grievances submitted, including any personal grievance attached to the current policy grievance of the Union, regarding the March 13, 2007

overtime policy. The Agreed Facts (paragraph 9) also indicate that the Employer has not denied payment to an employee who was approved to work overtime since the implementation of the policy. This is also not a case –as alleged in the grievance–where there is evidence of conditions of work in the bargaining unit being eroded as a result of, for example, a supervisor doing bargaining unit work.

Counsel further noted that there are no provisions in the Collective Agreement governing the timing of submitting an overtime form to the Employer. Counsel submits that the four-week policy for submitting the form is essentially an extension of article 24.03, which sets out a similar four-week period for payment of overtime from the date the employee submits the form. The policy therefore simply fills a gap in the Collective Agreement. It is a permissible exercise of management rights (article 7.01 of the collective agreement) and that there is no conflict with section 10 of the *Public Service Act*¹

Counsel further noted that the *Financial Administration Act* requires that the Comptroller General establish controls to ensure that the section 12 objectives, as set out in the Agreed Facts (paragraph 7), are achieved. One of the central requirements of the legislation is timely recording of expenditures for the proper pay period. The reporting of pay expenditures cannot be kept up-to-date if there are outstanding accounts which cannot be entered into the accounting software systems.

¹ See: *Minister Responsible for the Public Service v. The Union of Northern Workers* (Jolliffe) (July 4, 2012) at p. 17.

Counsel further submits that the "People Soft" (self-service) accounting system is available to all employees by simply logging onto the system and entering the overtime claim. The new system was introduced concurrently with the requirement for the timely entry of authorized overtime; that is, within four weeks from the time the overtime was worked. Given the ease of access to the software system, the Employer submits that four weeks is certainly a reasonable period of time for submitting overtime claims. The policy also stipulates that overtime submitted past the four weeks may be paid in exceptional circumstances if the Employer has approved the overtime i.e. employees who are engaged in field work for more than four weeks at a time. One can therefore draw a reasonable inference that the overtime policy was not designed to address those exceptional circumstances where specific arrangements have been put in place between the Employer and the employee regarding pre-approved overtime.

Counsel submits in the end that four weeks-two full pay periods- is ample time for employees to make overtime entries into the PeopleSoft software system. The Employer requests a finding that it has acted reasonably in implementing the policy and an order dismissing the grievance.

Reply of the Union

The Union submits that the absence of grievances is irrelevant to the issue before the arbitration board. The fact that there have been no individual grievances filed does not make it an appropriate policy. The Union is of the view that the four weeks stipulated for submitting an overtime form is not a workable policy, particularly when the policy prohibits a claim four

weeks after the approved overtime work has been completed. To deny an overtime claim after the four weeks, as the policy purports to do, is a violation of not only the pay requirements of the Collective Agreement but also the *Public Service Act*, which, as noted, requires the Employer to pay for work done.

Decision

I note that section 10(4) of the *Public Service Act* states that overtime is to be paid by the Employer "...in the month following the month in which it is worked". The Collective Agreement, at article 24.03, consistent with the legislation, also requires the Employer to pay overtime within a month (four weeks) of the employee submitting the "appropriate form" for overtime.

The Employer introduced new self-serving software in 2007. It permits employees to submit the "appropriate form" (article 24.03) by logging into their own computers and completing the necessary form on-line. Once that form-filling exercise is completed by the employee, the Employer has four weeks to pay the employee overtime under article 24.03. The Employer under the March 2007 policy requires employees to submit their overtime within four weeks of the completion of their overtime work. The policy letter of March 13, 2007 reads as follows:

Dear Mr. Parsons:

Submission of Overtime

At a recent Deputy Ministers Human Resource Committee meeting, there was discussion about the importance of paying employees on a timely basis and ensuring

that the recording of time worked including overtime, callback and standby is done as it occurs. This discussion arose, in part, because some employees get behind in submitting their time.

With the new self-service system, it is now far easier for employees to record this time when it is earned, for managers to approve it right away and for it to appear on their next pay. Managers want to do both the approval of this time and the payment as close as possible to the time worked. This will not only benefit the employee but will also allow for more effective workforce planning and financial management.

In implementing self-service, it came to light that some employees were not submitting their overtime on the paper forms in a timely fashion. Not only did this mean staff are not paid for time worked but it also makes it extremely difficult for supervisors to ensure that the time was actually approved in advance and worked as submitted. In order to address this issue, in the 2006/2007 fiscal year must submit, by March 30, 2007, all overtime, callback and standby worked for payment or, where applicable, for time in lieu of payment. Employees will be given notice of this time entry requirement. **Saved overtime submitted after March 30, 2007 will not be paid.**

Effective immediately, overtime worked must be submitted within four weeks of being earned (based on self service limits being two pay periods). Any overtime over the four weeks will only be approved and paid in exceptional circumstances (i.e. employees engaged in field work for more than four weeks at a time). Overtime submitted more than four weeks after it has been worked, will not be processed.

The entry of this time is relatively simple with self-service as is timely payment. For those employees who are not on self-service, they must submit their time sheets to their manager for approval and then to their local Human Resource service centre within four weeks of the time being worked.

The Government of the Northwest Territories is committed to ensuring timely and accurate payment of all staff. This change in processing overtime will support this commitment. If you have any questions or concerns on the above, please do not hesitate to contact Ms. Sharilyn Alexander at (867)873-7393.

Sincerely,

"Lynn Elkin"

Lynn Elkin
Deputy Minister

c. Ms. Sharilyn Alexander, Director
Corporate Human Resource Services – DHR

(emphasis added in bold).

There is no dispute that the Employer has the right to introduce administrative policies pursuant to the management rights clause. Indeed, as counsel for the Employer submits, such a policy does not circumscribe either the legislation or any Collective Agreement provision but rather “fills a gap”. The “gap” being filled is to have the employee do his or her part to submit the overtime form in a timely manner after the overtime work has been completed. Given that the Employer is obligated to pay the employee within four weeks of receiving the overtime form, it is reasonable in my view to ask the employee to similarly act within four weeks to fill in the form after the overtime work is done. In this way, the Employer and the employee are assisting the Comptroller General in equal measure with the duties prescribed under the *Financial Administration Act*, as set out in paragraph 7 of the Agreed Facts.

The Union has a point, however, with respect to the forfeiture of overtime pay if the employee does not meet the four-week deadline. The Union cited several examples of where the overtime form may not be completed, including language unfamiliarity or medical reasons. The Employer policy does mention that it will pay overtime beyond the four week period if it was worked but only in “exceptional circumstances”, such as when an employee is engaged in field work for more than four weeks at a time. But the policy also goes on to say in the same paragraph that: “Overtime submitted more than four weeks after it has been worked, will not be processed”. The last sentence in the previous paragraph uses equally strict language: “Saved overtime submitted after March 30, 2007 will not be paid”.

The policy as it stands is contradictory: on the one hand it indicates without qualification that overtime submitted after four weeks of being worked will not be paid; and, on the other hand, it mentions that overtime submitted beyond the four week time limit will only be paid in "exceptional circumstances", such as to field workers who work beyond the four weeks.

The Employer points out that the policy has not generated any grievances since its implementation in 2007. That may well be but it does not detract from the fact that the policy contains unequivocal language which, in my view, gives the Employer an unfettered right to deny overtime in the event it is submitted later than four weeks after being earned. By doing so, the employee is left without any remedy at all in the event the four-week time limit has not been followed, even in cases of exceptional circumstances. The policy as it stands is therefore an unreasonable exercise of the Employer's managerial responsibilities under article 7.

Conclusion:

The grievance succeeds to the extent that the policy is an unreasonable exercise of the managerial rights clause given that it does not clearly allow for overtime claims four weeks after the work is performed where there are exceptional circumstances. The policy would in my view conform to the requirements of the Collective Agreement if the following changes were implemented:

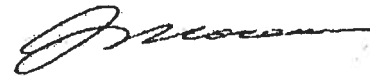
By adding the following sentence to the fourth last paragraph:

Saved overtime submitted after March 30, 2007 will not be paid, **except in exceptional circumstances.**"

By removing the last sentence from the third-last paragraph:

Effective immediately, overtime worked must be submitted within four weeks of being earned (based on self service limits being two pay periods). Any overtime over the four weeks will only be approved and paid in exceptional circumstances (i.e. employees engaged in field work for more than four weeks at a time). ~~Overtime submitted more than four weeks after it has been worked, will not be processed.~~

Rather than order the implementation of the above wording in the policy, I will reserve jurisdiction and allow the parties to opportunity to review the suggested language amendment in anticipation of a settlement agreement in that regard. Should the parties be unable to agree, I will reconvene the hearing to hear further submissions on remedy.



JOHN MOREAU QC
JANUARY 10, 2013