IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE UNION OF NORTHERN WORKERS

- and –

THE MINISTER OF HUMAN RESOURCES
GOVERNMNENT OF THE NORTHWEST TERRITORIES

Re: Overtime Grievance
(Section 23)

AWARD

BEFORE:

John Moreau, Q.C. **- Arbitrator**

IN ATTENDANCE FOR THE UNION:

Rebecca Thompson **- Grievance & Adjudication Officer, PSAC**
Anne Marie Thistle **- Director of Membership, Union of Northern Workers**
Garret Churchill **- Witness**

IN ATTENDANCE FOR THE EMPLOYER:

Christopher Buchanan **- Counsel, GNWT**
Sylvia Haener **- Witness**
Kim Wickens **- Director of Labour Relations, GNWT**
Lee Stroman **- Witness**

The Hearing was held in Yellowknife, NWT on December 16, & 17, 2015. Further submissions held by conference telephone call on March 8, 2016.

AWARD

INTRODUCTION

The Union claims in a policy grievance filed on September 4, 2015 that article 23 of the collective agreement requires that an employee who is asked to work any authorized overtime be paid a minimum of one hours' pay. Following one hour of overtime service, the Union's position is that overtime is to be paid for each 15 minute segment of work being performed by the employee.

The Employer disputes this interpretation. The Employer claims that the proper interpretation of article 23, and the longstanding practice, is to pay overtime for each completed 15 minutes of overtime worked, subject to a minimum payment of one hour at the overtime rate after the first 15 minutes of overtime work is completed. After the first hour of overtime, an employee is paid for each 15 minute block of overtime worked.

The Union called the following witnesses: Garret Churchill, firefighter; Anne Marie Thistle, Director of Membership Services. The Employer for their part called the following witnesses: Kim Wickens, Director of Labour Relations; Sylvia Haener, Deputy Minister of Justice; Lee Stroman, Airport Manager;

Both counsel provided several authorities in support of their submissions, some of which are referred to herein.

RELEVANT PROVISIONS OF THE COLLECTIVE AGREEMENT:

23.01 In this Article:

(a) "Overtime" means work performed by an employee in excess or outside of his/her regularly scheduled hours of work.

(b) "Straight time rate" means the hourly rate of pay.

(c) "Time and one-half" means one and one-half times the straight time rate.

(d) "Double time" means twice the straight time.

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 payment 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.

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

23.04 (1) Subject to the operational requirements of the service the Employer shall make every reasonable effort:

(a) to allocate overtime work on an equitable basis among readily available qualified employees who are normally required in their regular duties to perform that work; and

(b) to give employees who are required to work overtime reasonable advance notice of this requirement.

(2) An employee may, for cause, refuse to work overtime, providing he/she places his/her refusal in writing.

(3) Notwithstanding the permission granted by the Employer to engage in business or employment outside his/her regularly scheduled hours of duty under Article 8, such business or employment may not be approved as a cause to refuse to work overtime.

23.05 (a) An employee who is required to work overtime shall be entitled to a minimum of one hour's pay at the appropriate rate described below in (b).

(b) Overtime work shall be compensated as follows:

(i) at time and one-half (1 1/2) for all hours except as provided in Clause 23.05 (b)(ii);

(ii) at double time (2) for all hours of overtime worked after the first four (4) consecutive hours of overtime and double time (2) for all hours worked on the second or subsequent day of rest, provided the days of rest are consecutive.

RELEVANT LEGISLATION:

Public Service Act, R.S.N.W.T. (1988) c. P-16n (the "Act")

s. 38 Subject to the other provisions of this Act, and the regulations, an employee is entitled to be paid for the services rendered, the remuneration applicable to the position held by him or her.

Public Service Regulations, R.R.N.W.T. (1990) c. P-28, (the "Regulation")

10(1) A Deputy Minister may required an employee to work in excess of the daily or weekly standard hours or on a holiday where, in his or her opinion, the workload so requires.

10(2) Where an employee, other than a manager or a professional, is required to work 0.5 hours or more in excess of the daily or weekly standard hours, he or she shall be paid for the overtime at 1.5 times his or her regular rate of

PRELIMINARY ISSUE:

The Employer received a notice from the Union that it would be seeking a remedy from these proceedings of overtime compensation for employee Garret Churchill, a shift supervisor firefighter at the Yellowknife Airport. The Employer takes the position that the Union is not entitled to individual compensation given that the arbitrator's jurisdiction is limited to the redress sought in the policy grievance. The Employer notes that the arbitration board is not seized with a separate individual grievance from Mr. Churchill requesting overtime pay. The Employer went on to state that it is prejudiced because it has not been given an opportunity to respond to the monetary request. Further, counsel for the Employer points out that the collective agreement specifically provides for separate individual (article 37.14) and policy (article 37.16) grievances and the Union has elected to only file a policy grievance.

The Union submits that policy grievances do not operate in a vacuum. The Union notes that individual employees are affected by breaches in the collective agreement and that the remedies requested in this case fall within the ambit of a policy grievance.

The parties agreed that the arbitration board would hear the evidence and rule on the preliminary objection in the award.

SUMMARY OF THE EVIDENCE:

Mr. Churchill testified that he and the other fire protection services crew members are required at the airport fire hall for all flights arriving and departing from the airport. If the flight arrives late, he and his fellow crew members are required to remain on the

premises. For example, if the shift is scheduled to end at 10:30 p.m. and a flight touches down at 10:34 p.m., the firefighter crew must remain on the premises until 10:34 p.m.

Mr. Churchill explained that the overtime issue arose in the early summer of 2015 when one of the firefighters, Mr. Bourgeois, was required to remain at work less than 15 minutes past his normal shift hours of 10:30 p.m. Mr. Bourgeois, who no longer works at the Yellowknife airport, indicated to Mr. Churchill at the time that he would not be claiming for one hour of overtime because he was not required to work for a full 15 minutes past his normal shift hours.

Mr. Churchill testified that overtime has been approved for him in the past without any dispute if he was required to work after his scheduled hours of work, even if it was for less than 15 minutes. That practice of paying him overtime for any time worked past his scheduled shift changed after the following email was sent by the Fire Chief, Sherry Beard, to all fire personnel, including Mr. Churchill, on July 13, 2015.

> Subject: OT for late flights
>
> Hello,
>
> I just wanted to have a quick chat about OT for flights arriving within the time of 2330 and 2345. Overtime does not begin until 15 minutes after the end of your shift. Therefore for flights that arrive[s] after 2346 or later, overtime shall be paid at the appropriate rate but not before.
>
> *(The email then goes on to cite article 23.01 of the collective agreement).*

Mr. Churchill testified that he believed it was ludicrous that he should have to work up to 14 minutes of overtime without any compensation at all. It defied, in his view, the common principle that an individual employee is entitled to be paid for hours

worked. He testified that his interpretation of the s. 23 overtime provision was, and continues to be, that any time he was required to work past his regular shift hours qualified him for one hour of overtime pay-whether he had to work an extra 2 minutes or 57 minutes. He noted that this has been the practise since he began working for the Employer some 11 years ago.

Mr. Churchill referred by way of example to a call-back on March 4, 2015 for a shift scheduled from 16:54 hrs to 22:54 hrs. On that occasion, he testified that he worked 3 minutes of overtime to 22:57 while waiting with his co-worker, Mr. Bourgeois, for the aircraft to land that evening. He was paid for the call-back as follows: the first 4 hours of overtime at 1.5 times his regular pay rate and for a further 2.25 hours of overtime at 2.0 times his regular pay rate. He explained that he submitted his time for work performed on the call-back that night as 2.25 hours (and not 2.0 hours) because working the extra 3 minutes from 22:54 to 22:57 qualified as a quarter hour (.25), or 15 minutes of overtime under article 23.02.

Ms. Wickens is the current Director of Labour Relations for the Employer. She explained that article 23 provides for minimum overtime compensation of one hour, subject to a “buffer” for the first 15 minutes. Ms. Wickens testified that overtime is based on a “completed” period of overtime. This means that an employee, in her words, “...needs to work that extra 15 minutes to get the one hour benefit”. Once having worked the full 15 minutes, employees are entitled to the greater benefit of one hour of overtime pay.

Ms. Wickens further explained that the Overtime clause amounts to a trade off: no overtime is paid for the first quarter hour of overtime but employees, on the other hand, receive an hour of overtime pay once having finished a quarter hour of overtime work. Ms. Wickens noted that the Hours of Work and Overtime policy set out in the Human Resources Manual, dating back to August 2006[1], indicates how the Overtime provision is to be applied:

> 27. An employee who must work overtime shall be compensated for each completed 15 minutes of overtime worked. There is a minimum payment of one hour at the appropriate overtime rate.
>
> - Example 1: Employee works 25 minutes of overtime. He/she gets paid for one hour (OT/1)
> - Example 2; Employee works 10 minutes of overtime. He/she does not get paid for overtime.
>
> 28. After the first hour of overtime, an employee is paid for each completed 15 minutes of time.
>
> - Example: Employee works two hours and 20 minutes of overtime on a Saturday. The overtime pay is for two hours and 15 minutes (OT1).

Under cross-examination, counsel for the Union put to Ms. Wickens that if her interpretation of article 23 is accepted, an employee working 5 days/week for 48 weeks would have accumulated 56 hours of unpaid time if they worked 14 minutes of overtime each shift. Counsel further put to Ms. Wickens that, using her example, these extra hours should be paid at straight time rates. Ms. Wickens replied that the time worked in the example was in excess of the regular hours of work and accordingly falls into the category of overtime which is governed by article 23.

[1] The same wording is found in updated versions of the policy dated November 2011 and December 2015, all of which were provided to the Union.

Ms. Haener was the Director of Labour Relations and Compensation Services for 16 of her 27 years of service with the Employer, including in 2003. She testified that overtime has historically never been paid by the Employer on a “minute-by-minute” basis. Instead, article 23.02 sets out that overtime is paid on 15 minute parcels of time, with a minimum payment of one hour once an employee has worked the initial 15 minutes of overtime.

Ms. Haener noted that the 1970-1972 collective agreement was the first collective agreement between the parties that contained a clause indicating that overtime would be paid for each completed 15 minutes of overtime for work performed by employees in excess of their scheduled hours of work. Similar language followed in the 1972-1974 collective agreement. The 1974-1976 collective agreement then added the minimum one hour payment once an employee had completed 15 minutes of overtime work.

Ms. Haener went on to testify that she had never personally authorized payment of overtime for an employee who has worked past their scheduled shift for less than 15 minutes. She indicated that in the event overtime is required, managers are encouraged to structure the work such that an employee is providing service not just for 15 minutes but rather as close as possible to the full hour for which employees are entitled to receive overtime pay under article 23.02.

Ms. Haener also testified that the floor requirement for a complete fifteen minutes of overtime service before overtime compensation is paid is often balanced off with circumstances involving the unanticipated workplace needs of an employee. For

example, an employee might need to leave 10 minutes early on a given work day to meet a colleague for lunch. Under cross-examination, Ms. Haener confirmed that there was no employer policy which spoke to her example of leaving 10 minutes early for a lunch date.

Mr. Stroman has been the Regional Airport Manager for 13 years. Prior to that time, he held the position currently occupied by Ms. Beard of Fire Chief & Manager of Safety and Security. It was his responsibility to approve overtime at the Yellowknife Airport for Mr. Churchill and his co-workers. His practice was to only pay overtime when one of his crew worked more than 15 minutes; any overtime services performed for less than a full 15 minutes did not attract overtime pay. He confirmed that he authorized one hour of overtime if a firefighter on duty worked a full 15 minutes passed their regular shift. The same firefighter was paid for each block period of 15 minutes after completion of the initial 60 minutes of overtime.

Mr. Stroman was asked about the call-back shift of March 4, 2015 where Mr. Churchill was paid the 2.25 hours. Mr. Stroman testified that this was an error and that Mr. Churchill should not have received the extra .25 hours of overtime. Mr. Stroman indicated that Mr. Churchill only worked for a 3 minute segment of overtime and had not performed 15 minutes of overtime service as required by article 23.02. He also testified that it was “irregular and inconsistent with the accepted practice” to bill for 3 minutes of overtime as a 15 minute segment.

Mr. Stroman confirmed that he reviewed the time records for the same March 4, 2015 shift referred to by Mr. Churchill. He further noted that Mr. Churchill’s co-worker

that evening, Mr. Bourgeois, did not submit an overtime claim for the extra 3 minutes he was required to work that evening. Nor was he aware of any other employees who submitted a claim for overtime if they worked less than the 15 minute period set out in article 23.02. Mr. Stroman indicated in that regard that he verified the log book for the months of May, June and July 2015 for the airport firefighters and no one else had claimed for overtime if they worked less than the 15 minute block of overtime in cases of flights arriving after the regular shift ended.

Ms. Thistle was called as a reply witness for the Union. She testified that it was on Mr. Churchill's advice about his overtime concerns in July 2015 that led to the filing of the current grievance. She mentioned that an earlier grievance (#1806) was withdrawn because it was broader in scope than the current grievance. The earlier grievance only indicated, in that regard, that the Employer was not properly compensating employees for overtime. The current grievance is more specific with respect to the relevant articles that the Union alleges have been breached, including articles 23.01(a), 23.02 and 23.05 (a).

SUBMISSIONS OF THE UNION

Union counsel first offered some general comments at the outset of her submissions. She first drew attention to article 2(w) of the collective agreement which defines overtime as "...work performed by an employee in excess of or outside his/her regularly scheduled hours of work". Employees are mandated to remain in the workplace on penalty of insubordination if they refuse to do so.

The Union then noted that the absence of any payment to employees for the first 15 minutes of overtime violates s. 38 of the PSA which states that an employee "...is entitled to be paid, for services rendered, the remuneration applicable to the position held by him or her." In support, The Union cites the decision of *Vancouver Police Department v. Vancouver Police Union* (October 13, 2005) where Arbitrator Hall allowed for the payment of straight time following the completion of the police officers' shift given that the time worked was not considered to be "overtime" under the collective agreement. Counsel for the Union cited the following from p. 21 of the award:

> The grievance succeeds under the second branch of the Union's arguments. Where members of the Department work less than one-half hour following completion of a regular shift, the time they work is not "overtime" or on "extended tour of duty" under Section 7.3 of the collective agreement. Members are nonetheless entitled to be compensated, and should be paid at their straight time rates for the actual time worked. Absent agreement, the Employer cannot resort to the prior informal practice of compensating employees by granting time off at a later date.

Counsel also pointed out that the Direction to management in the general public service is to make the allocation of overtime efficient by using up the full hour of overtime rather than just the initial 15 minutes. The airport operations, however, have always operated differently with employees only having to remain on the airport premises for short periods of time-often less than 15 minutes-until the late-arriving aircrafts land safely.

Turning to the main interpretation issue, counsel submits that article 23 is clear and unambiguous. She noted in particular that the first paragraph of article 23.02, and article 23.05(a), both indicate that employees shall be entitled to one hour of overtime

pay for any work performed during that first hour they are required to remain at work. The Employer, however, refuses to apply the two articles in the same manner by authorizing a minimum of one hours' pay for work performed within the first 15 minutes of overtime.

If the overtime provision is found to be ambiguous, the Union submits that the Employer cannot rely on a longstanding policy or practice of not paying for the first 15 minutes of overtime, and the Union's acceptance of that practice, as a basis for an estoppel. The first time the Union was in fact aware of a number of firefighters being regularly scheduled to work overtime was when Mr. Churchill spoke to Ms. Thistle in July 2015. The subsequent filing of this grievance was notice to the Employer that the Union did not accept the Employer's view of article 23 in these circumstances.

In the alternative, the filing of the grievance was notice to the Employer that the Union no longer acquiesced in the Employer's refusal to pay overtime. The filing of the grievance brought the estoppel to an end; or, at the very least, the Employer is now estopped from claiming a different interpretation until the expiry of the collective agreement.

The Union submits that the grievance should be upheld and that the policy of the Employer be declared to be in breach of article 23 of the collective agreement.

SUBMISSIONS OF THE EMPLOYER

Counsel for the Employer noted at the outset that articles 23.01(a), consistent with article 2(w), defines "*Overtime"* as *"...work performed in excess of an employee's*

regularly scheduled hours of work". Article 23.05 goes on to state that an employee who works overtime shall be entitled to a minimum of one hours' pay, at the appropriate rate of overtime pay, for hours worked. The Employer further notes that, consistent with the obligation to pay a minimum of one hour of overtime at the rate specified in article 23.05(b), article 23.02 states that the payment of overtime shall be for each "completed" 15 minutes of work to employees who are required to work beyond their scheduled hours of work. Counsel for the Employer submits that the reference to the word "completed" disposes of any suggestion of ambiguity i.e. an employee must work a full 15 minutes to be compensated for 15 minutes of overtime.

Once having satisfied the condition precedent that they have worked the full 15 minutes of overtime, employees are then entitled under article 23.02 to a minimum of one hour of overtime, subject to the work being authorized by the Employer [23.02(a)] and the employee not controlling the duration of the overtime work [23.02(b)]. Article 23.05(b) then focuses, as noted, on the rate at which an employee is to be compensated once the employee qualifies for overtime under article 23.02.

Accordingly, the Employer also takes the position that the relevant provisions of the collective agreement, as set out in article 23, are clear and unambiguous with respect to the circumstances overtime is to be paid to an employee like Mr. Churchill.

In the alternative, if an ambiguity exists, past practice resolves the interpretation of the overtime provision in favour of the Employer. It is clear, as indicated in the testimony of Ms. Wickens, that the Employer's interpretation of the overtime provision has been well-known to the Union for years. Counsel referred in that regard to the

interpretation and application of the Overtime provision set out in the Employer's Human Resources Manual, including the August 2006, November 2011 and December 14, 2014 versions, all of which have been provided to the Union since the Overtime policy guidelines were first published. For example, the August 2006 version states in reference to the application of the overtime provision:

> 27. An employee who must work overtime shall be compensated for each completed 15 minutes of overtime worked. There is a minimum payment of one hour at the appropriate overtime rate.[2]

Both Mr. Thistle and Ms. Haener confirmed that the practice during their respective tenures in charge of the Human Resources Department has always been to require 15 minutes of "completed" overtime before overtime pay is due and owing to an employee.

Counsel noted that Ms. Haener indicated that article 23, to the best of her recollection, has been raised from time to time in bargaining over the years but there were no changes proposed to the current wording of article 23 by the Union. The Employer further submits that the Union would have suggested other wording in the bargaining rounds leading to the earlier collective agreements if they believed the overtime provision was ambiguous or had been misapplied. Ms. Haener, counsel noted, set out the Employer's position to all Human Resources Managers, as well as to the Union, in a Memorandum dated April 30, 2003. The Memorandum noted that a

[2] See a similar provision at #12 in the November 14, 2011 version and the #12 in the December 17, 2014 version.

grievance had been recently filed by the Union with respect to the interpretation of article 23. The grievance was later withdrawn by the Union.

Counsel for the Employer also underlined in his submissions that Mr. Stroman, who has 13 years of experience with the Employer, also applied article 23.02 in a manner which follows the practice articulated by Mr. Thistle and Ms. Haener. Indeed, a member of the grievor's own crew, Mr. Bourgeois, also followed the Employers' practice with respect to claiming overtime.

Counsel for the Employer noted that the parties have compromised on days where an employee is asked to work less than 15 minutes of overtime without compensation by allowing that same employee to take a longer lunch hour, for example, on another work day.

What the parties have elected to do in the end is to balance what is essentially a "buffer" time of 15 minutes of overtime work in exchange for the requirement to pay one hour of overtime for an employee who works 15 minutes of overtime or more. In the event an employee is asked to work overtime on a regular basis of less than 15 minutes, the matter would be addressed through the addition of more staff.

Accordingly, the Employer submits that the practice over the last 39 years under article 23 has been to require that an employee work 15 minutes of overtime to be eligible for overtime compensation. Once an employee has completed 15 minutes of overtime, they are entitled to 1 hour of overtime at 1.5 times their regular rate of pay and payment for each 15 minute block of overtime after the first hour.

Finally, the Employer submits that an estoppel has been created by the consistent acceptance by the Union of the Employer's application of article 23 over almost 40 years. There has been a clear fulfillment here of the requirements of equitable estoppel: an unequivocal representation beginning almost 40 years ago that the Union up until this grievance agreed to the Employer's view of article 23 and a reliance on that representation resulting in detriment to the Employer if the Union's position is upheld. In the absence of any past objection to the practice, it was reasonable for the Employer to believe that this practice would continue until the next round of bargaining.

REPLY OF THE UNION

Counsel for the Union noted that article 5.03 stipulates that the terms of a collective agreement prevail over any Direction or other Instrument issued by the Employer. In other words, the Human Resources policies issued over the years with respect to Overtime cannot override the rights and obligations set out in article 23. Counsel also noted that article 23.03 obliges an employee to record their overtime in a manner prescribed by the Employer. i.e. punching a clock. Under article 23.04, an employee has no choice but to work overtime (unless there is a refusal for cause set out in writing). The situation for the firefighters is that they already accommodate to a rigid shift schedule timed down to the precise minute. Employees, like the grievor, should therefore have the benefit of being paid appropriately for any overtime worked-even a few extra minutes as Mr. Churchill did on March 4, 2015- in the face of such a rigid schedule.

SUBSEQUENT SUBMISSIONS OF THE PARTIES:

On December 16, 2015 counsel for the Employer, with the consent of counsel for the Union, wrote to the arbitration board directing attention to a relevant legislative authority which came to parties attention subsequent to the hearing. The relevant authority is Section 10 (1) and 10 (2) of the Regulation.

On March 8, 2016, at the request of the arbitration board, counsel were asked to make further oral submissions by telephone on this provision as it relates to the issues in these proceedings.

Counsel for the Employer took the position that section 10(2) of the Regulation only requires the payment of overtime when an employee is required to work 30 minutes of their daily scheduled hours of work. The collective agreement is more generous in that regard as an employee is only required to work 15 minutes before receiving the one hour of overtime payment. In other words, there is a lower threshold in the collective agreement and a greater monetary benefit than provided for in section 10 (2) of the Regulation. In the absence of similar provision, the Employer would be required to pay overtime only after an employee works the floor period of 30 minutes.

Counsel for the Union submits that s. 38 of the PSA clearly states that an employee is entitled to be paid for services performed. The Regulation cannot be read to contradict the statutory requirement of an employee's entitlement to be paid for services rendered. Section 10(2) of the Regulation simply guarantees a greater monetary benefit for employees required to work overtime. Accordingly, in order to

maintain a consistent interpretation in reading both the PSA and the Regulation, an employee should be paid at least straight time for the floor period of 30 minutes before the minimum overtime rate of 1.5 times the regular rate of pay is engaged under article 10(2) of the Regulation.

Counsel for the Employer maintained in Reply that overtime under article 10(2) is only payable if it is authorized in advance for a period .5 hours, or more. Conversely, overtime is not payable if an employee is asked to work 30 minutes or less beyond their normal hours of work. The balancing act achieved under the collective agreement is to pay a minimum of overtime after 15 minutes of authorized overtime work. This is a simplified solution which the parties have clearly agreed to over the years. Alternatively, the Employer sates that entitlement to straight time for the first 15 minutes is not an issue that arises out of the present grievance.

ANALYSIS

The facts in this case are similar to those in the decision of *Francine Lirette and Jacques Nadeau and Treasury Board (Transport Canada*) (1987) CarswellNat 2028 provided by the Employer. In that case, the grievors were marine traffic regulators who were required to attend 10 minute briefings at the time of each shift change. The service operated 24/7 with three shifts of eight hours each. The collective agreement in *Lirette*, similar to the one before this arbitration board, only allowed overtime compensation for briefings *"...for each completed 15-minute period".* The union argued (paragraph 11) that the actual services being performed by the grievors for each shift was the normal 8 hour shift plus the 10 minutes for the briefing. The Union submitted

that *"...nothing in the collective agreement precluded the employer's paying an employee straight time for work of less than fifteen minutes duration".* The Employer replied in its submissions that paying employees at straight time for periods of less than 15 minutes outside the regular hours of work was not a matter which had been negotiated in the collective agreement-the collective agreement only set out compensation for each 15 minute period of overtime.

In dismissing the grievance, Chair Galipeault concluded in *Lirette* as follows:

> [23] It therefore follows from the foregoing, first, that the time the grievors must devote to briefing constitutes "overtime" within the meaning of the collective agreement. Second, this overtime cannot be compensated at the higher overtime rate because, apart from exceptional circumstances requiring prior authorization, the employer limits the duration of the briefing to 10 minutes and because the collective agreement requires an employee to complete 15 minutes' work to qualify for compensation at the overtime rate.
>
> [24] Consequently, I'm obliged to conclude that the grievors are not entitled to any compensation for the time they must devote to briefing during watch changes. I conclude that the few minutes of the employees' time that this activity consumes – and the evidence reveals that this is less than 10 minutes in many instances – are integral part of the grievor's normal duties...

Mr. Churchill's shift was scheduled to end at 22:54 on March 4, 2015. *His After Hours Request Form* entered into evidence indicates that he finished work at 22:57, three minutes passed his scheduled time off. Those three minutes, similar to the 10 minutes of briefing time in the *Lirette* decision, fall squarely within the definition of "Overtime" under article 23.01(a) of the current collective agreement which reads as follows:

> "Overtime" means work performed by an employee in excess of his/her regularly scheduled hours of work.

Again, similar to the *Lirette* case, the parties here have bargained an Overtime provision which has two main requirements. First, the overtime must be authorized in advance by the Employer; second, an employee must have "completed fifteen (15) minutes of overtime" in order to qualify for an overtime payment.

In my view, the meaning of "completed fifteen (15) minutes of overtime" as set out in article 23.02 is clear and unambiguous[3]. Just as in the *Lirette* case, an employee like Mr. Churchill must work a full 15 minutes before he or she becomes eligible for the overtime premium pay. Once having passed the 15 minute mark after finishing their regular hours of work, the parties have negotiated that employees will be entitled to one hour of authorized overtime for the first hour and then payment for each completed block of 15 minutes of overtime afterwards. I would add that the reference to the minimum of one hours' pay set out in article 23.05 refers to the rate of pay at which overtime will be compensated depending on the number of hours of overtime worked. It does not qualify or otherwise alter the requirement for an employee having to work a full 15 minutes before being eligible for the premium overtime payment.

Turning to the relevant legislative provisions, the parties pointed out in their telephone submissions, as noted, a reference to section 10 of the Regulation. It is worth underlining that section 10(1), consistent with article 23.02 of the collective agreement, permits the Employer to *"...require an employee to work in excess of their daily or weekly standard hours of work..."* Section 10(2) of the Regulation then goes on to set a

[3] The word "completed" is defined in Webster's Dictionary as follows: *To make complete, accomplish; finish, fulfil...*

floor amount of pay for Overtime at 1.5 times the employees' regular rate of pay but only if the employee is *"...required to work .5 hours or more..."*

The Union notes that section 38 of the PSA states that *"...an employee is to be paid for services rendered, the remuneration applicable to the positions held by him or her."* The argument of the Union is that employees, on the strength of s. 38, should be paid for every minute they provide services, including the period of time passed their regular hours of work where the Employer requires them to remain at work.

I note that the words *"Subject to other provisions of this Act and regulations..."* are found at the beginning of section 38. In my view, this wording permits the enactment of a Regulation, such as section 10, on the matter of how remuneration for services rendered by an employee is to be paid to employees in the specific circumstances where they are required to work overtime. In that regard, section 10(2) states that payment is required at 1.5 times an employee's regular rate of pay but only after the employee is required to work .5 hours (30 minutes) or more. The parties here have bargained beyond the floor rate minimum by reducing the 30 minutes to 15 minutes before the premium rate is invoked. They have also agreed to a one hour minimum of overtime payment after 15 full minutes of overtime work. Employees who work longer than one hour of overtime are paid for each "completed" 15 minutes.

The payment of overtime in the manner it is administered under the collective agreement by the Employer is consistent with the key legislative provision governing the payment of overtime found in section 10(2) of the Regulation. It is also, from a policy point of view, consistent with other decisions in this area by arbitration panels, including

the *Lirette* decision. I note in that regard that Chair Galipeault in *Lirette*, at paragraph 24, cites Arbitrator Weatherill in *Re: Central Hospital Corp. and Ontario Nurses' Association, Local 107* 10 LAC (2d) 412 dealing with a hospital setting involving shift nurses:

> The persons covered by this collective agreement are professional nurses, paid a monthly salary, and accustomed, as a matter of long-standing routine, to carry out the end-of-shift report and drug count even although it might involve remain on duty after the hours of the normal tour.

Similarly, employees governed by this collective agreement have come to a similar give-and-take position under article 23. Employees are asked to work overtime but the Employer must pay for a minimum of one hour at a premium rate once the clock ticks past fifteen minutes.

In the end, employees in any industry must occasionally give up personal time- in this case not more than 15 minutes- as part of their "normal duties", to cite the word of Chair Galipeault. In exchange, there are occasions where the Employer will show flexibility, as Ms. Haenen mentioned, by allowing an employee an extra few minutes at lunch for personal reasons.

The parties have struck a bargain here that has endured almost 40 years with very little fallout. It is a credit to both sides that the provisions they have negotiated have stood the test of time. It is at the bargaining table, nevertheless, that any refinements to the current system should be addressed.

The grievance is dismissed. Given the disposition of the grievance, it is unnecessary for me to provide a ruling on the preliminary jurisdictional issue raised by the Employer.

In closing, I would like to express my appreciation to both counsel for their efforts in this matter.

JOHN MOREAU QC

April 7, 2016