



Public Service Labour
Relations Board
BY HAND

Commission des relations de travail
dans la fonction publique
BY HAND

Reference No N° de référence
569-02-35

Handwritten: JUL - 9 RECD/08

July 9, 2008

Captain Mark Boucher
National Secretary Treasurer
National Canadian Merchant Service Guild
1150 Morrison Drive, Unit 150
Ottawa ON K2H 8S9

Mr. Drew Heavens
Director
Employer Representation and Discipline
Labour Relations Operations
Treasury Board of Canada Secretariat
L'Esplanade Laurier
Mailroom - P3, West Tower
Ottawa ON K1A 0R5

Dear Mr. Boucher:

Dear Mr. Heavens:

**Re: Policy grievance referred to adjudication
The Canadian Merchant Service Guild v.
Treasury Board (Department of Fisheries and Oceans)**

Enclosed is a copy of the decision concerning the above-cited matter.

The decision is being translated into the other official language and will be provided upon request.

Yours truly,

Rachel Deschênes
Registry Officer
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Encl.

cc: L. Dempsey
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Date: 20080709

File: 569-02-35

Citation: 2008 PSLRB 52



*Public Service
Labour Relations Act*

Before an adjudicator

BETWEEN

CANADIAN MERCHANT SERVICE GUILD

Bargaining Agent

and

TREASURY BOARD
(Department of Fisheries and Oceans)

Employer

Indexed as
*Canadian Merchant Service Guild v. Treasury Board (Department of Fisheries
and Oceans)*

In the matter of a policy grievance referred to adjudication

REASONS FOR DECISION

Before: Renaud Paquet, adjudicator

For the Bargaining Agent: David Jewitt, counsel

For the Employer: Caroline Engmann, counsel

Heard at Ottawa, Ontario,
June 16, 2008.

REASONS FOR DECISION

I. Policy grievance referred to adjudication

[1] The Canadian Merchant Service Guild (CMSG) filed a policy grievance against the Treasury Board (TB or "the employer") on March 1, 2007. The grievance reads as follows:

...

The Guild on its own behalf and on behalf of its members, hereby grieves the Employer's unilateral decision as stated in Fleet Circular FC-03-2007 regarding compensation for training to compensate officers only at their straight time rate for "... activities such as on the job familiarization...."

This determination is contrary to the agreement reached regarding LOU 04-5 and is further in breach of the provisions of the Agreement relating to Officers under "Appendix H" in which it is established that an Officer is either in lay-days, or working or on authorized paid leave, subject only to specific exemptions agreed to by the Guild.

...

[2] The CMSG sought the following corrective action:

...

The Guild does not agree with the Employer's inclusion of familiarization within the LOU-04-5 and hereby requests a declaration that the Fleet Circular FC-03-2007 is in breach of the Employer's obligations under the collective agreement and further requests an Order compensating any officer affected retro-actively.

...

[3] The TB responded to the policy grievance on July 13, 2007. In its response, the TB stated that it failed to see how the employer contravened the provision of the collective agreement between the TB and the CMSG, which expired on March 31, 2006 ("the collective agreement"), in its Fleet Circular, FC-03-2007. I will return later in this decision to the rationale behind the employer's response to the grievance. On July 17, 2007, the CMSG referred the grievance to adjudication.

II. Summary of the evidence

[4] The CMSG tabled five documents, and the TB tabled four documents. The CMSG called as a witness Mark Boucher, National Secretary Treasurer, CMSG, at the time the

grievance was filed. The TB called Max Birch, Marine Superintendent, Canadian Coast Guard, Pacific region.

[5] The employees represented by the CMSG are ships' officers and are covered by the collective agreement. At the time of the grievance, the collective agreement had not been renewed and continued to apply. This is still true today.

[6] The ships' officers for whom this policy grievance applies work under the "Lay-Day Operational Crewing System" described in Appendix H of the collective agreement. Under that system, as a general rule, all days are considered as working days, and there are no days of rest except for the authorized leave with pay provided in the collective agreement.

[7] In practice, employees work on cycles that can vary in length but that are most often of 28 days' duration. Under that system, an employee is aboard a vessel for 28 days and works 12 hours each day. During those 28 days, the employees earn lay-days. Then, they are off duty for 28 days. For each off-duty day, the employees "spend" or "use" the lay-days earned. The employees are paid for 6 hours a day, 7 days a week, for each day of the whole 56-day cycle. The same logic, adjusted for the numbers, applies if on-duty cycles are shorter or longer than 28 days.

[8] When an employee is on short-term training as defined in Letter of Understanding 04-5 (LOU 04-5), the employee remains on his or her work cycle. If the training activity is undertaken during a scheduled off-duty portion of the work cycle, the employee is compensated for training at the straight-time rate of pay.

[9] When beginning a new work cycle, an employee may be posted to a vessel to which he or she has never been previously posted. In such a situation, the employer may require that the employee be given shipboard familiarization, which can last from a few hours to four days, depending on the number and complexity of the topics to be covered.

[10] Section 6 of the Fleet Safety Manual outlines when familiarization is required and what it comprises. The manual specifies that employees joining a vessel for the first time shall receive familiarization training and that it should also be given to employees who have not served aboard the vessel for a period greater than six months

or, in the case of seasonally operated ships, who were not aboard at the end of the previous cycle.

[11] The purpose of familiarization is to ensure that employees are familiar with their duties and responsibilities related to safety, security and protection of the environment. Familiarization is vessel specific. It provides specific knowledge about a vessel's functioning and characteristics, its program or mission, and its area of operation, along with the activity in the area.

[12] For the TB, familiarization must be considered as training as defined in LOU 04-5. Its position is in line with that expressed by the Canadian Coast Guard in Fleet Circular FC 03-2007. For the CMSG, familiarization should not be considered as training as defined in LOU 04-5.

[13] If familiarization is considered to be training, employees attending familiarization on their lay-days would be paid straight time and are deducted a lay-day for each day of familiarization. If it is not considered to be training, then employees, for each day of familiarization, would be considered as being at work and would earn a lay-day instead of using one.

[14] LOU 04-5 defines training as "(a) a course given by the Employer, (b) a course offered by a recognized academic institution, (c) a seminar, convention or study session in a specialized field directly related to the officer's work". The CMSG filed as an exhibit a one-page document dated November 21, 2006, that contains an amendment to LOU 04-5. The amendment was agreed to by the parties on November 21, 2006. Its object was to add the following: "(d) Time required to maintain or re-qualify or recertify training previously taken under (a), (b) or (c)." However, it should be noted that the amendment had not yet been implemented, since the new collective agreement has not been signed.

III. Summary of the arguments

A. For the bargaining agent

[15] The content of Fleet Circular FC 03-2007 was never brought to the bargaining agent's attention before it was issued. The employer decided unilaterally to include job familiarization under the definition of training to get LOU 04-5 to apply.

[16] LOU 04-5 is an exception to the rule outlined in Appendix H of the collective agreement, which states that at any given time, an employee is at work, on lay days or on authorized leave with pay. In light of that, LOU 04-5 should be interpreted restrictively and its application limited to the training activities listed there.

[17] That argument is also supported by the amendment to LOU 04-5 agreed to by the parties on November 21, 2006. It shows that if the employer wants to include more activities to LOU 04-5, it needs to get the bargaining agent's approval.

[18] In signing LOU 04-5, the parties were very specific, and there was no common intention to give the employer the latitude to add what it wants. There is a rule in writing a collective agreement that if you mention the specifics, you exclude the other possibilities.

[19] There is a clear distinction between familiarization and training. Familiarization has to do with a change of work site, and as such, it does not fall under training as defined in LOU 04-5.

[20] The CMSG referred me to the following decisions to support its arguments: *Giasson v. Treasury Board (Fisheries and Oceans)*, 2000 PSSRB 94, and *Labatt Breweries Ontario v. Brewery, General and Professional Workers' Union, Local 1* (2003), 116 L.A.C. (4th) 81. The CMSG also referred me to paragraphs 4:2100 and 6:3230 of Brown and Beatty, *Canadian Labour Arbitration*.

B. For the employer

[21] The adjudicator's role in this case is to determine if familiarization training constitutes an activity that falls under the definition of training negotiated by the parties in LOU 04-5.

[22] This case differs from the *Giasson* case in which the situation had to do with crew changes. In this case, training is required when an employee is assigned to a new vessel with which he or she is not familiar. The content of that training is specified in the Fleet Safety Manual. It is tailored to each situation and employee. The manual also explains when it is required.

[23] When familiarization occurs, knowledge about a particular vessel is transferred. Employees have the basic competence required, but they have to learn the specifics of

each vessel. They do it in a job-shadowing format where they have no formal duties assigned to them.

[24] The list of training activities included in LOU 04-5 is not exhaustive and simply reflects what the parties agreed to specifically. In mentioning short-term training later on in LOU 04-5, the parties opened the definition to other types of training not specifically listed in LOU 04-5.

[25] The parties clearly contemplated that short-term training could occur on off-duty time. It is important to mention that employees get paid for the time during which they are being trained. So, there is no loss to the employees when they get trained.

[26] The TB referred me to the following decisions to support its arguments: *Banton and Donald v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-02-22966 and 22967 (19930216); *Lacroix et al. v. Treasury Board (Fisheries and Oceans)*, 2003 PSSRB 71 and *Vernon Nursing Home Services Ltd. v. U.F.C.W., Loc. 175* (1990), 15 L.A.C. (4th) 348. The TB also referred me to paragraphs 4:2100 and 4:2110 of Brown and Beatty.

IV. Reasons

[27] There is only one issue in this policy grievance: to determine whether the familiarization that employees are required to perform when they change vessels is training as defined by LOU 04-5, attached to the collective agreement. If I conclude that it is training, the collective agreement has not been violated. If I conclude to the contrary, the employer violated the collective agreement by including familiarization in the training activities listed in Fleet Circular 03-2007.

[28] The decision of whether to include familiarization in the definition of training affects the status of employees when they are being familiarized, and ultimately their pay and their earning or spending of lay-days.

[29] LOU 04-5 reads as follows:

...

RE: Training

This will confirm the understanding reached by the parties in negotiations regarding the application of training for officers working under Appendices "H", "I" and "J".

Definition

Training refers to an activity where the Employer has determined that such training is necessary or will assist the officer in carrying out his/her assigned duties.

The following activities shall be deemed to be training:

- (a) a course given by the Employer,*
- (b) a course offered by a recognized academic institution,*
- (c) a seminar, convention or study session in a specialized field directly related to the officer's work.*

Training is divided into short and long term. Short term training is any training scheduled to be twenty-eight (28) days or less in duration and long term training is that which is scheduled to be duration longer than twenty-eight (28) days.

Short Term Training

For short term training the officer shall remain in their normal "work cycle". In those periods where the officer is undertaking training during the normally scheduled off duty portion of the work cycle the officer will be compensated for the scheduled training period at their straight time rate of pay.

Long Term Training

For long term training the officers shall be temporarily removed from their work system and shall work, and be compensated, in accordance with Appendix "K".

Other

Officers on training under Appendix "K" will be compensated for the scheduled training period at their straight time rate.

Officers on training shall be reimbursed for all reasonable travel expenses incurred.

...

[30] The Fleet Safety Manual defines familiarization. The manual also contains a sample familiarization checklist, which appears in Annex A of section 6.C.1. Annex A reads as follows:

Annex A - Example of a shipboard safety and security systems check list

- *Emergency signals and procedures for fire stations, boat stations and abandon ship explained.*
- *Fire station duties explained - Muster location and person in charge of party identified.*
- *Boat station duties explained - Muster location and person in charge of party identified.*
- *Shown two (2) distinct routes from person's cabin to the fire and boat muster stations.*
- *Lifejacket inspected and in good order [sic] demonstration of proper donning, securing and towage.*
- *Location of immersion suits shown - Suit tried on and safety features explained.*
- *Location and capacity of all ship's lifeboats, fast rescue craft shown - Launch and boarding procedures explained.*
- *Location and capacity of all ship's lifecrafts shown, fast rescue craft shown - Launch and boarding procedures explained.*
- *Location of liferings and attached equipment shown - Man-overboard procedure explained.*
- *Location of fire alarms and extinguishing equipment shown and use explained - Fire reporting procedures explained.*
- *Location of first aid kits and eye wash stations shown - Accident reporting procedures explained.*
- *Location of watertight and remote control stations shown - Operation and safety precautions explained.*
- *Location of any restricted areas (arms lockers, engine room, etc.) identified.*
- *Location and operation of ship's telephone systems (internal & external) shown and explained.*
- *Location of ship's sailing boards shown - The meanings of various orders and recall procedures explained.*
- *Alcohol and smoking policy explained.*
- *Responsibilities for security system of the vessel explained.*

[31] Annex A also includes a statement for the person joining the vessel and the commanding officer to sign stating that:

...

The systems and policies listed above have been explained to me by . . . , I understand them and will use and apply them as needed or directed. If I have any questions, I will ask my supervisor immediately for clarification.

...

[32] Further to the topics specified as examples in the Fleet Safety Manual, familiarization also provides specific knowledge about the program or the mission that is to be undertaken by the crew and the officers.

[33] The evidence presented to me is clear. Familiarization is not aimed at acquiring the skills necessary to exercise a trade or a profession. Its purpose is for the crew to acquire knowledge specific to a vessel before embarking on a program or a mission.

[34] At page 3363, the *New Shorter Oxford English Dictionary*, Oxford University Press, 1993, defines "training" as the "act or process of providing or receiving instruction in or for a particular skill, profession, occupation, etc." Even if familiarization is not defined, at page 913, the dictionary defines "familiarize" as to "make habitual or well known; make well acquainted or at ease with; bring into familiar use."

[35] Brown and Beatty at paragraph 6:3230, distinguish training and familiarization in the context of access to jobs or promotions. Even if the context of the present case differs, the distinctions brought by the authors are useful:

...

At the same time, however, arbitrators have always insisted that an employer must provide employees with a period of familiarization or orientation during which they can acquaint themselves with the details and routine of the job, especially with respect to jobs that are neither highly technical nor particularly skilled. In doing so, they have rejected the proposition that an employee who applies for a job must be able to perform all of its aspects immediately upon commencing his or her duties, on the grounds that to do so would render seniority rights virtually meaningless. However, before an employee can claim entitlement to a

period of familiarization, the employee must be able to show that there are reasonable grounds to conclude that once he or she has had some time to orient himself or herself in the position, he or she will be able to do the job. As well, arbitrators have stressed that a period of familiarization is not the same as and does not embrace formal training as such. Whereas training involves learning new skills, becoming familiar with a new position involves learning the details and daily routine of a new job. Trial periods have a learning and developmental aspect, as well as a demonstrative or confirmatory purpose, but they do not normally entail any substantial instruction.

...

[36] In that paragraph, Brown and Beatty basically consider that training has to do with learning new skills and that familiarization refers to learning the details and daily routine of a new job. That interpretation is generally supported by the adjudicator in *Labatt Breweries Ontario*.

[37] In commenting on the meaning of a provision of a collective agreement, Brown and Beatty at paragraph 4:2110, write:

...

In searching for the parties' intention with respect to a particular provision in the agreement, arbitrators have generally assumed that the language before them should be viewed in its normal or ordinary sense unless to do so would lead to some absurdity or inconsistency with the rest of the agreement or unless the context reveals that the words were used in some other sense.

...

[38] In their normal or ordinary sense, familiarization and training have different meanings and refer to different activities. If it was the intent of the parties to give a different meaning to training than what it normally means, they should have written it in the collective agreement, but they did not.

[39] LOU 04-5 is specific in defining training. First, it must be an activity that is necessary or that will assist employees in carrying out their assigned duties. Second, the following activities are deemed to be training: a course given by the employer, a course offered by a recognized academic institution, or a seminar, convention or study session in a specialized field directly related to the employee's work.

[40] There is no doubt that employees need familiarization to do their work. It is also clear that employees acquire knowledge when they are being familiarized. But familiarization does not fall under the ordinary meaning of training, and it is not mentioned as an activity deemed to be training in LOU 04-5.

[41] In *Banton and Donald*, the adjudicator wrote that an employee should not be allowed to earn additional lay-day pay when he or she is being paid for a lay-day. I agree with that interpretation, but that is not what the CMSG is asking for. It is also not relevant in considering familiarization as separate from training.

[42] In *Lacroix et al.*, the adjudicator writes, at paragraph 62, that the collective agreement must be read as a whole in order to understand what is included in a workweek or a work month. The collective agreement in this case does not indicate whether familiarization should be considered training, or whether lay-days should be earned or spent on a familiarization day that falls on a scheduled lay-day.

[43] In *Vernon Nursing Home Services Ltd.*, the adjudicator ruled that an employee should not be paid for homework for a training course. He arrived at that conclusion based on the wording of the collective agreement. The adjudicator wrote that it was not the intention of the parties that the employee be able to make more money by taking a course than if she performed her regular duties. I am faced here with a different collective agreement, and I cannot import the intention of those parties into interpreting the collective agreement in this case.

[44] Both parties referred to *Giasson*. In that case, the issue was determining whether the employer could deduct lay-day credits for a debriefing period of one-and-a-half hours occurring during a shift change. The adjudicator ruled that the employer could not deduct lay-day credits for that period because the employee should be considered as being at work.

[45] I agree with the TB that the situation in *Giasson* is different from this case. However, there is also a parallel that can be established, in that familiarization is closer to debriefing than to training.

[46] Having ruled that familiarization is not training as defined in LOU 04-5, employees that attend familiarization that requires their presence at work should be considered as being at work and not on lay-days. Lay-days are paid time off from work

that employees earn when they work. To require or order employees to be at work during their lay-days is contrary to the collective agreement except if there is a disposition of the agreement that allows the employer to do so. If the employer wants employees to work during their lay-days, it needs to change those lay-days to work days during which employees would earn lay-days.

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

(The Order appears on the next page)

V. Order

[48] The policy grievance is allowed.

[49] Fleet Circular FC 03-2007 must be amended by deleting any reference to job familiarization under the heading Application.

[50] Employees who have been negatively affected by the application of Fleet Circular FC 03-2007 in the case of job familiarization must be compensated retroactively.

[51] I will remain seized for a period of 120 days from the date of this decision to address any matters relating to its implementation.

July 9, 2008

**Renaud Paquet,
adjudicator**