Files: 166-2-13812 to 13817

No. 84

PUBLIC SERVICE STAFF RELATIONS ACT

BEFORE THE PUBLIC SERVICE STAFF RELATIONS BOARD

BETWEEN:

DOUGLAS ARCHER ET AL,

Grievor,

AND:

TREASURY BOARD
(Transport Canada),

Employer.

DECISION

Before: D.G. Pyle, Board Member and Adjudicator.

For the Grievor: Ms. Catherine H. MacLean, counsel.

For the Employer: Mr. Harvey Newman, counsel.

ART 15
CODE 402/82

Heard at Calgary, June 22, 1983.

UNEQUAL DISTRIBUTION
OF OVERTIME

DECISION

1. This reference to adjudication, pursuant to section 91 of the Public Service Staff Relations Act (PSSRA), is a consolidation of grievances filed by Messrs. D.R. Archer, W.M. Hawkins, D.M. Comtois, L.R. Ellis and V.K. Lepitski. Counsel for the parties were in agreement that these proceedings would be confined to the grievances of D.R. Archer and W.M. Hawkins, dated June 23 and June 29, 1982, respectively, and the grievances of the other employees would be held in abeyance.

2. The grievance of Mr. Archer reads as follows:

> On June 5/82 the above controller was on days off and #2 for call in overtime. A controller was called in who had more hours worked and was behind me on the call in list. This was done contrary to 15.03 of the contract and solely to alleviate paying overtime at a 2.5 rate.

And the grievance of Mr. Hawkins reads:

> On Thursday, June 24, 1982, I was denied the opportunity to work an overtime shift even though I had the lowest accumulated overtime hours of those indicating their availability for the shift. I was refused the shift on the basis that I would be paid two and one half (2 1/2) times my normal hourly wage. This is contrary to article 15 of the CATCA - Treasury Board Agreement.

3. Both grievors are classified as air traffic controllers (AI-4) and are employed at the Calgary Terminal Control Unit (TCU), Calgary International Airport. Both are represented for collective bargaining purposes by the Canadian Air Traffic Control Association (CATCA) and their terms and conditions of employment were, at the time of the events

.../2

giving rise to the grievances, covered by the collective agreement between the Treasury Board and the Association, Code 402/82, Expiry date: December 31, 1982 (exhibit 1).

4. There is little dispute as to the facts in these proceedings. The collective agreement was signed by the parties on May 28, 1982, and incorporated a new provision, compensation at the rate of two and one-half times (2 1/2) an employee's straight-time hourly rate of pay. Clause 15.02 now reads, in part, as follows:

> 15.02
>
> (a) An employee shall be paid for overtime worked by him at one and one-half (1 1/2) times his straight-time hourly rate except that:
>
> (i) if the overtime is worked by the employee on two (2) consecutive and contiguous days of rest, the employee shall be paid at two (2) times his straight-time hourly rate for each hour worked on the second day of rest,
>
> and
>
> (ii) if the overtime is worked by the employee on three (3) or more consecutive and contiguous days of rest, the employee shall be paid at two and one-half (2 1/2) times his straight-time hourly rate for each hour worked on the third and subsequent days of rest.
>
> Second or third and subsequent days of rest means the second or third and subsequent days in an unbroken series of consecutive and contiguous calendar days of rest.

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At issue in these proceedings is clause 15.03, which reads as follows:

> The Employer will endeavour to keep overtime work to a minimum and shall assign overtime equitably among employees who are qualified to perform the work that is required at the location concerned.

5. Under date of June 10, 1982, Mr. F.G. Lowe, Unit Chief, Calgary TCU issued an Office Memo #17/82, addressed to supervisors and controllers, entitled "Overtime - Policy and Administration" (exhibit 4). The portions of the memorandum which appear pertinent to these proceedings include the following:

> Overtime is used by the Unit to provide minimum staff to ensure the continuity of Air Traffic Services within the airspace assigned to Calgary TCU, and to provide additional staff as required to meet specific requirements.
>
> Overtime can be divided into categories which are defined and administered as follows:
>
> 1. Scheduled Overtime
>
> Scheduled overtime is that which can be identified more than 15 days in advance, and which can be scheduled so as to ensure equal distribution among, and a minimum of inconvenience to, equally qualified staff. Scheduled overtime is normally the result of staff shortage, refresher-training, long term illness, long term projects, military exercises, or other activities which can be planned for.
>
> ...

The supervisors responsible for the shift schedules shall schedule overtime shifts using the following criteria:

1. All scheduled overtime will be at time and one half rate.

2. Normally, scheduled overtime will be assigned on an employees first and/or last earned day of rest.

3. Except as approved by an employee, overtime will not be scheduled on earned days of rest prior to or following periods of annual leave.

Scheduled overtime will be recorded by the shift schedulers. During the scheduling process overtime will be assigned to the controller available to work overtime at the time and one half rate who has the least number of hours accumulated as scheduled overtime.

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2. Call-In Overtime

Call-in overtime is that which cannot be identified more than 15 days in advance, and which cannot be equitably distributed through the scheduling process. Call-in overtime is normally the result of casual sick leave, abnormal traffic situations, or other short notice staff shortages.

Controllers should indicate on the appropriate page of the Supervisors Journal those shifts they wish to be considered as being available for call-in overtime. When a requirement for overtime is identified those who have indicated their availability for that shift will be ranked according to the number of hours of call-in overtime

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recorded by the supervisors and the shift offered to the controller with the lowest number of hours.

...

Call-in overtime shifts may be offered on the basis of the following:

1. Call-in overtime may be offered by a supervisor (controller on the midnight shift) when the number of controllers reporting for duty falls below the minimum specified in the Unit Minimum Staffing Policy and known traffic conditions warrant.

2. The controller with the lowest number of hours recorded as call-in overtime, who has indicated his availability for the shift and who is eligible for overtime at the time and one half, or double time rate will be offered the shift. In the event of a refusal or where more than one controller is required, the next ranked controller shall be called.

3. Except as required to ensure midnight shift coverage, overtime at the two and one half time rate, or which will result in overtime at the two and one half time rate shall not be offered, or authorized without the expressed permission of the TOS or Unit Chief.

Once the overtime availability list is exhausted, other controllers on earned days of rest may be contacted, starting with the controller with the least number of hours recorded as call-in overtime and working upwards.

> With respect to the IFR room separate overtime records for each speciality area will be maintained. Scheduled overtime will be equally distributed within each speciality group through the scheduling process previously described. Call-in overtime will be distributed as follows:
>
> The IFR supervisor will prepare two availability lists - one for each speciality group.
>
> When a requirement for overtime is identified, replacement shall be from the speciality group the controller originally scheduled to work the shift was from. Only after all attempts to secure a replacement from this group have failed will a controller from the other group be called, and coverage on the "common" sector be adjusted.
>
> ...

6. Mr. Archer testified that the parties have identified overtime as one of three types, namely:

1. Scheduled overtime,
2. Call-in overtime, and
3. Overtime immediately prior to or following an employee's regular shift.

The practice at the Calgary International Airport has been for an employee to signify, in writing, that he will be available for call-in overtime on one or more of the shifts (day, evening and midnight) on his days of rest. The employer would then record this information, together with the employee's telephone number and his credited hours of overtime. Separate lists were maintained for the enroute speciality

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controllers and for the terminal speciality controllers. Once this information was recorded there was a line drawn and below the line were the names, and data, of controllers whom the supervisors had established as "not unavailable".

7. Mr. Archer signified his availability for call-in overtime for any shift on June 5, 1982 (exhibit 2) by writing in his code initials ("AR") and a supervisor recorded this fact on a form headed "Overtime Call-In" (exhibit 3). The form shows the names of four enroute controllers and Mr. Archer's credited overtime hours as 1145. Another employee, a Mr. Geiger, is shown as having 1282 credited overtime hours. Further, below the line are the names of three additional enroute controllers.

8. A position was vacant on both the day and evening shifts on June 5, 1982. Mr. Archer was not called in. All of the other six controllers were either not available or declined the opportunity to report for work on the day shift. Mr. Geiger accepted the assignment on the evening shift.

9. On June 10, 1982, a similar situation arose. Mr. Archer had indicated his availability and there was a vacancy on the evening shift (exhibit 5). In this instance the record (exhibit 6) shows that the evening shift was "one enroute controller short" and that a terminal controller was retained until 10:00 p.m. Mr. Archer testified that he was telephoned, that he did accept but that, within a matter of minutes, he was informed that the call-in was cancelled.

10. Mr. Hawkins is a terminal air traffic controller and his code initials are "WH". He recorded his availability for work on June 24, 1982 (exhibit 7). He was not called in but another employee, a

.../8

Mr. McCallum, whose name was included on the form as one who was not unavailable, was called in. Mr. Hawkins further testified that he worked the day shift on August 5, the midnight shift on August 6 and indicated his availability for any shift on August 7. He was not called in but another controller, a Mr. Lepp, who had 200 credited overtime hours more than the grievor had, was called in. A similar situation arose on September 4, 1982.

11. Mr. Gordon F. Lowe has been the Unit Chief, Calgary TCU since May, 1977 and is the author of the Office Memo (exhibit 4). He testified that the new policies were made effective June 1, 1982 and set out in writing in the Office Memo of June 10. Two significant changes in practice were incorporated in the memorandum; scheduled overtime was to be at the rate of time and one-half and call-in time was not to be offered at the two and one-half time rate without the express approval of a member of the senior management.

12. Mr. Lowe testified that it would be impossible to schedule all overtime hours evenly among all the controllers at the TCU. Some employees complained for more overtime while others refused any overtime where it was a matter of choice. To ensure an equitable distribution of scheduled overtime Mr. Lowe had instructed the scheduling supervisors to assign such overtime to those employees for whom the overtime assignment would involve compensation at the rate of time and one-half and not at the rate of double time. In this way Mr. Lowe could be assured of an equitable distribution of the scheduled overtime.

13. Mr. Lowe further testified that to mix scheduled overtime with call-in overtime would be to mix apples with oranges. Both parties recognized the distinction. The call-in system, the selection first from among the volunteers and then from those controllers not unavailable, had been proposed by the bargaining agent and accepted by the

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employer as an equitable arrangement for the distribution of call-in overtime among those controllers who welcomed overtime opportunities. In Mr. Lowe's opinion, it resulted in a minimal impact on what employees would regard as their free time.

14. In cross-examination Mr. Lowe acknowledged that there was a "national thrust" to minimize payments at the new rate of double time and one-half but he saw it as an effort to achieve a maximum utilization of resources, i.e., of money.

ARGUMENT FOR THE BARGAINING AGENT

15. Ms. MacLean, counsel for the bargaining agent, noted that the practice of the employer at Calgary TCU had been, prior to June, 1982, for employees who volunteered for overtime call-in to be afforded the first opportunity in the event of a vacancy in order of their credited overtime hours. The employer has now changed its practice so that an employee, who would be entitled to be paid at two and one-half times his straight time rate if he were called in, is by-passed.

16. In Jennens (Board file 166-2-3178) Adjudicator R.D. Abbott had before him the same clause 15.03 and the distribution of overtime at the Vancouver Air Traffic Control Tower. The final paragraph of his decision reads as follows:

> To summarize, I have found that Clause 15.03, the only clause dealing with the distribution of overtime, has no application to the facts of this case. That Clause conditions the employer's imposition of overtime work on employees who are not free to decline that work. It says nothing about the distribution of overtime

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> opportunities to employees who are free to accept or decline overtime. Therefore, the employer was free to adopt any system for the distribution of voluntary overtime and its adoption of the system here in question could not be a breach of the collective agreement. Furthermore, if indeed Clause 15.03 does apply to the facts of this case, then I would hold that the system adopted by the employer satisfied that Clause's requirement to "assign overtime equitably". For these reasons, this grievance must fail.

Ms. MacLean observed that if I were of the same view then the grievances must be denied in that there would be no specific clause in the collective agreement which had been breached. It was her submission, however, that I was not bound by a strict application of the doctrine of res judicata, for reasons expressed by Adjudicator K.E. Norman in Johnson (Board file 166-2-10027). Moreover, the bargaining agent is not estopped from proceeding with the adjudication of these grievances simply because the bargaining agent has, in the interim, signed subsequent collective agreements with the same clause 15.03. In Re Phillips Cables Ltd. and United Electrical, Radio and Machine Workers, Local 510 (16 L.A.C. (2d) 225) a board of arbitration reviewed numerous arbitral awards on this whole subject, as well as Brown and Beatty, Canadian Labour Arbitration, and expressed its agreement with the general principle set out in Re Brewer's Warehousing Co. Ltd. and Int'l Union of Brewery, Flour, Cereal, Malt, Yeast, Soft Drink & Distillery Workers, Local 278C (1954), 5 L.A.C. 1797 (Laskin, Rees and Pyle) in which Professor Laskin (as he then was) stated succinctly, at page 1798:

> It is not good policy for one Board of Arbitration to refuse to follow the award of another Board in a similar dispute between the same parties arising out of

> the same Agreement where the dispute involves the interpretation of the Agreement. Nonetheless, if the second Board has the clear conviction that the first award is wrong, it is its duty to determine the case before it on principles that it believes are applicable.

17. Ms. MacLean submitted that Adjudicator Abbott was in error, that his award is wrong and that it is the duty of any second adjudicator to determine the case before him on the principles which the adjudicator (and Ms. MacLean) believes are applicable. Clearly the employees and their bargaining agent are desirous of holding overtime to a minimum, even if they can also decline any overtime opportunities. Each controller is vitally concerned with his own health and with the quality of his performance on the job. There is nothing inconsistent with holding the employer to minimizing overtime and, at the same time, the voluntary acceptance of overtime by the individual controller. Accordingly, Adjudicator Abbott erred when he states, at page 8:

> ...On its face, Clause 15.03 clearly deals with a situation totally different from that which gave rise to this grievance. It makes no sense to require the employer to "endeavour to keep overtime work to a minimum" and to "assign" overtime equitably unless the parties to this collective agreement assumed that Clause 15.03 was to apply only when overtime work was to be imposed on unwilling employees. If the parties assumed that employees are free to accept or decline overtime there would have been no need to oblige the employer to minimize overtime work. Likewise, while "assign" may be synonymous with "allocate" or "apportion" (as suggested by Mr. Corbett in argument) nevertheless in its context, the word seems to connote authoritative imposition, i.e., involuntary overtime.

18. Further, there are no grounds for making the distinction between the words "assign" and "allocate". According to The Concise Oxford Dictionary, the verb "assign" means "allot as share (to)" and the verb "allocate" means "assign, devote, (to person or purpose)" and the noun "assignment" means "allocation". Moreover, in Narbonne (Board files 166-2-12473 and 166-2-13059) it is apparent that the employer in another collective agreement has used the expressions interchangeably. The subheading for a clause in dispute in that instance is "Assignment of Overtime Work" and then the reference is to allocating overtime on an equitable basis.

19. Further, the employer has admitted that the new policy is designed to minimize costs of overtime. In Sumanik (Board file 166-2-395) Chief Adjudicator E.B. Jolliffe, Q.C., (as he then was) had before him an issue as to distribution of overtime and an argument for the employer that the words, "subject to the operational requirements of the service", could well include the need to avoid the cost of double time when the job could be done at time and one-half. He invited the parties to cite authorities with respect to the meaning of the term "operational requirements" and did not receive any citations which were helpful. At page 15 he stated that in his opinion it was not an operational requirement when the employer determined, as a matter of administrative policy, that the labour cost of each flight should be "X dollars" rather than "Y dollars".

20. In Sumanik (supra) the Chief Adjudicator concluded, at page 16, as follows:

> With respect to the corrective action requested, I cannot accept the contention of the aggrieved employee that overtime should be shared "equally". What may be

> equitable is not necessarily equal. Overtime, however, should be shared equitably in the sense that over a 28-day cycle there would be no wide gaps between one employee and others. Over a period of one year the results should be approximately equal, and I stress the word "approximately".

Similarly, these air traffic controllers with minimal credited hours of overtime must be afforded the opportunity to "close the gap" with those who have substantially more credited overtime hours. There is evidence in these proceedings that Mr. Archer has not caught up with Mr. Geiger nor has Mr. Hawkins caught up with Mr. Lepp. In any event, at the time of these incidents, the separations were increased when these overtime opportunities were given to the two other employees and not to the grievors.

ARGUMENT FOR THE EMPLOYER

21. Mr. Newman, counsel for the employer, submitted that at issue in these proceedings is the interpretation of clause 15.03 of the collective agreement, an issue which has already been resolved. The clause does not apply and the employer is free, pursuant to its rights as management, to distribute voluntary overtime as it sees fit.

22. A second adjudicator must give substantial weight to a prior decision and particularly to one which has not been challenged by way of judicial proceedings. He should not disturb a previous decision unless he is satisfied that the previous decision is manifestly wrong. As stated in Brown and Beatty, Canadian Labour Arbitration, at page 86:

> Because the relationship of the parties to a collective agreement is a continuing one and because of the fact that in different grievances the same clause may be the subject of interpretation and application on successive occasions, both the doctrine of res judicata and issue estoppel have been qualified to some extent in grievance arbitration. Generally, the view has been expressed that res judicata does not apply nor is the arbitrator bound by a prior award as to the construction of the agreement. Rather, it is said that the prior award should be followed unless the arbitrator has a clear conviction that the earlier interpretation is wrong. This approach has been taken whether it is the same language in the same agreement or in subsequent agreements where it has remained unchanged.

23. In the alternative, Mr. Newman submitted that neither grievor has established that on the days in question there was an inequitable assignment of overtime. At issue is whether they suffered an inequity at those points in time, not whether it turns out that, "down the road", they had less overtime hours than did others. Moreover, it would have been much more expensive to assign the overtime work to the grievors than to the other employees. The employer made a decision to by-pass employees for whom the overtime assignments would require payment at the rate of double time and one-half. The grievors have not shown that the decision was inequitable, that it was unfair, that the employer was capricious. The decision of the employer to minimize the payment of double time and one-half applied to all employees and there is no evidence that it produced substantial distortions, bearing in mind that there is no evidence that the overtime hours of the grievors were distorted by comparison with the overtime hours of all of the other controllers in Calgary TCU.

24. In Sumanik (supra) there was a directive by the employer to minimize the cost of overtime. The criteria were different in that the employer was bound to allocate overtime work on an equitable basis among readily qualified employees. The avoidance of paying double time produced "rather curious results". In any event, at page 16 the Chief Adjudicator states:

> In replying to the grievance, management relied heavily on the argument that the fluctuating allocation of overtime would prove to be equitable over a long period, such as one year or more. The evidence before me does not support the argument. I was given the particulars of overtime worked by each man throughout the period from December 1, 1969, to December 25, 1970, a period of almost 13 months. Distribution was very uneven and inconsistent. In my view, it was inequitable for a considerable part of that period.
>
> With respect to the corrective action requested, I cannot accept the contention of the aggrieved employee that overtime should be shared "equally". What may be equitable is not necessarily equal. Overtime, however, should be shared equitably in the sense that over a 28-day cycle there would be no wide gaps between one employee and others. Over a period of one year the results should be approximately equal, and I stress the word "approximately". This can be achieved if the employer amends its directive of March, 1970, to make clear that double time is to be minimized, but always subject to the requirements of the collective agreement and particularly the requirement that the allocation of overtime shifts is to be on an equitable basis. Specifically, Mr. Storey should not be required to call in an employee on his first day of rest

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> when that employee has already worked far more overtime than another employee who is available but who happens to be on his second day of rest.

25. Finally, the employer could only equalize call-in overtime amongst all of the air traffic controllers by requiring them to accept such assignments - something which the parties have agreed, at the present time, is not necessary.

ARGUMENT IN REBUTTAL FOR THE BARGAINING AGENT

26. Ms. MacLean argued that the employer had clearly introduced a factor extraneous to the distribution of overtime when it introduced the matter of cost. It is apparent that the grievors were willing to accept overtime assignments which other air traffic controllers with substantially more credited overtime hours were given. There was no effort on the part of the employer to close the gap when, for example, on June 10, 1982, the employer assigned the overtime work to an employee whose specialty was not the work of a enroute controller. Sumanik (supra) is perhaps not too similar but the Chief Adjudicator did urge upon the employer to make an effort to close the gap and not to introduce extraneous criteria which could only complicate matters.

DECISION

27. At the outset I would note that the difference between counsel as to my jurisdiction is more apparent than real. I would further observe that in Simpson and Jobin (Board files 166-2-13676 and 13708) I noted the Johnson (supra) award and concluded by posing the same question: "Am I convinced that this interpretation is manifestly wrong?"

28. In clause 15.03 the employer has undertaken to endeavor to keep overtime to a minimum. The employer has also agreed that it "shall assign" overtime equitably among qualified employees. It is further agreed that an employee, with two exceptions, will be compensated for all overtime work at time and one-half his standard hourly rate. The two exceptions are payment at the rate of double time for work on an employee's second day of rest, where the employee has also worked his first day of rest, and then double time and one-half for work on his third (and subsequent) consecutive day(s) of rest. It follows that each of the grievors had been scheduled three or more days of rest, that each grievor had worked the first two days of rest and that each grievor was seeking to be assigned overtime on a call-in basis on his third consecutive day of rest.

29. I can only conclude, as did Adjudicator Abbott, that clause 15.03 clearly deals with a situation totally different from that which gave rise to these grievances. The clause provides that the employer "will endeavour" to minimize overtime work and then, somewhat in contrast, that the employer "shall assign" overtime equitably. Given the use of the mandatory "shall" I can only conclude, as did my colleague, that clause 15.03 is to apply only when overtime work is imposed by the employer upon the employees. In this regard I feel that the word "assign" is somewhat more authoritative than "allocate" but, in any event, the expression "shall assign" does denote an authoritative imposition, i.e., of involuntary overtime.

30. It is of interest to note that this collective agreement provides for three rates of overtime compensation, a "standard" rate of time and one-half and then a second rate, of double time, and a third rate, of double time and one-half for work performed on a third

consecutive day of rest. Clearly the increase in premium pay for working on the second day of rest is substantial, twice the premium paid for any "standard" overtime and the premium pay for working on the third consecutive day of rest is even more substantial.

31. In Palmer, Collective Agreement Arbitration in Canada, (second ed.) the author states at page 630:

> Most collective agreements provide that work performed beyond a certain number of hours, either in a day or a week, is to be paid for at premium rates, commonly called overtime pay. The rationale for overtime pay is outlined in the following way:
>
> > What is overtime and why is a premium paid for it? Overtime is work which an employee is required to do over and beyond the regular hours which his contract - in this case a collective agreement - required he shall work. A premium is paid because the employee has to work longer hours in any given day, week or month than he normally wishes to work and also for the social inconvenience caused him by having to work when he had planned leisure.
>
> It has also been suggested that overtime premiums are intended as an inducement to the employer to restrict overtime.

With due respect to the learned author, some arbitrators have more than suggested that overtime premiums are intended as an inducement to the employer to restrict overtime. Be that as it may, an employee is paid a premium when he is called upon to work hours or days in excess of what has been agreed upon by the parties as normal. Where the employer requires an employee to work more and more overtime, including

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additional days of rest, the parties may well agree that the employee is entitled to a higher and still higher premium rate of pay. The rationale is simple: the employer is not required to pay the higher premium unless it requires the employee to work the additional overtime. It can avoid the higher premium by not requiring the additional overtime work from the employee. In contrast, the grievors are claiming that the employer is required to offer to them an overtime assignment at the highest premium rate, which offer they are free to decline. With respect, such an inverse approach would require a more explicit undertaking on the part of the employer than is expressed in clause 15.03.

32. In passing, in Sumanik (supra) Chief Adjudicator E.B. Jolliffe had before him a situation where two overtime rates of pay were payable. At page 10 the Chief Adjudicator states:

> The Edmonton office could properly advise Mr. Storey that he should arrange his scheduling, whenever practicable, to minimize the incidence of double time, but that such arrangements would have to be consistent with the requirements of the collective agreement.

And at page 16:

> This can be achieved if the employer amends its directive of March, 1970, to make clear that double time is to be minimized, but always subject to the requirements of the collective agreement and particularly the requirement that the allocation of overtime shifts is to be on an equitable basis.

The Chief Adjudicator agreed that the payment of double time could be minimized, provided the content of the other provisions of the clause were met. He did not conclude that the employer introduced an extraneous matter when it sought to minimize the payment of double time per se.

33. Before concluding I believe some comment is in order regarding the argument of counsel as to "closing the gap" between the credited overtime hours of Messrs. Archer and Hawkins on the one hand and of Messrs. Geiger and Lepp on the other. If the grievors were not as prone to volunteer their services for call-in overtime as were the other employees, it is not surprising that a gap was created and maintained. On the record before me it would appear that the grievors, at the time the grievances were filed, were accepting overtime assignments but I am left to wonder whether this was normal or whether they were doing so in order to provide the basis for their claim for an overtime assignment on their third consecutive and contiguous day of rest. In any event they are assured by Office Memo #17/82 (exhibit 4) that an overtime call-in shift is to be offered on the following basis:

> 2. The controller with the lowest number of hours recorded as call-in overtime, who has indicated his availability for the shift and who is eligible for overtime at the time and one-half or double time rate will be offered the shift.

There is, of course, no evidence before me which would indicate that either grievor was denied an equitable share of call-in overtime assignments, given the above criteria.

.../21

34. Accordingly, the grievances of Messrs. Archer and Hawkins are denied and these adjudication proceedings, with respect to their grievances, are terminated.

D.G. Pyle,
Board Member and Adjudicator.

OTTAWA, August 11, 1983.