

Pay (Designated Holiday)

File: 166-2-89

PUBLIC SERVICE STAFF RELATIONS ACT

ADJUDICATION

Between:

PAUL S. WARREN,

grievor

- and -

THE TREASURY BOARD  
(Department of Transport)

employer

Before:

Mr. W.S. Martin, Q.C., Chief Adjudicator

For the grievor:

Mr. J.P. Nelligan

For the employer:

Mr. P. Delage

Date and place of hearing: Ottawa, Ontario, April 9, 1969.

Date of decision: June 10, 1969.

ART 16

LIEU DAY MOVED TO FIRST  
WORKING DAY

The Grievor claims the violation of Article 16.00 of a Collective Agreement covering holidays. November 11, Remembrance Day, is designated as a holiday for employees within the bargaining unit. In the event that the designated day coincides with an employee's day of rest, the holiday shall be moved to the employee's first working day following his day of rest. The first scheduled working day for the Grievor was November 12. On November 12 the Grievor reported sick and did not work. The Grievor worked on November 13 and claims to be paid for work performed on November 13 at one and a half times the straight time hourly rate for all hours worked.

Article 16.00 designates eleven days as holidays. Payment for these holidays is not to occur if an employee is "absent without pay on both the working day immediately preceding, and the working day following the holiday."

In the instant case the Employer argues that the first scheduled day of work for the Grievor was November 12, and therefore this is the date upon which the Grievor is entitled to holiday compensation. On the other hand, Counsel for the Grievor argued that November 13 was in fact the Grievor's first working day, and by virtue of the operation of Article 16.04 of the Collective Bargaining Agreement, Mr. Warren is entitled to be paid overtime compensation.

The Employer argued that it was the intention of the parties to interpret Article 16.02 as meaning the Grievor's first scheduled working day following his day of rest.

Article 16.02 is as follows:

"When a day designated as a holiday under 16.01 coincides with an employee's day of rest, the holiday shall be moved to the employee's first working day following his day of rest."

The issue raised by the grievance is - do the words "the employee's first working day following his day of rest" in Article 16.02 mean the first day he actually works or the first day he is scheduled to work? The wording in this Article is clear and unambiguous. The intention of the parties must be gathered from the wording and structure of the agreement. Reference is made to "the employee's first working day following his day of rest." If it was the intention of the parties to prescribe the operation of this Article to scheduled days of rest, this objective could easily be obtained by inserting the word "scheduled" into the Article.

It is generally recognized that in the interpretation of agreements, recourse to the intention of the parties only occurs in situations where the clear intent of the

parties is not revealed by the language used in description. See Re United Steelworkers and John Inglis Co. Ltd. (1953) 4 Lab.Srb.Cas.1457, Re United Steelworkers and Steel Equipment Co.Ltd. (1955) 6 Lab. Arb.Cas.19, Re Sudbury General Workers Union Local 902 and A.Silverman & Sons Ltd., 18 L.A.C. 224 at p.227, and North York Township Civic Employees Union and Township of North York, 12 L.A.C. 233. In this case there is no justification for holding that the Article should be interpreted to mean that the parties intended to have application to the scheduled day of work, in preference to the actual day of work, and, therefore, the grievance is allowed.

WINNIPEG, Manitoba, June 10, 1969.

"W. Steward Martin"  
Adjudicator.