

Pay (Designated Holiday)

File: 166-2-90

PUBLIC SERVICE STAFF RELATIONS ACT

ADJUDICATION

Between:

JOHN R. CAMPBELL,

grievor,

- and -

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: April 9, 1969. Ottawa, Ontario.

Date of decision: June 10, 1969.

ART 16

LIEU DAY MOVED TO FIRST
WORKING DAY

The facts of this grievance are similar to the facts in the Warren case. The Grievor is an air traffic controller and alleges that Article 16.02 of the Collective Agreement has been violated by the Employer. Article 16.02 of the Agreement reads 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."

October 13th, 14th and 15th, 1968, were, for Mr. Campbell, days of rest. Thanksgiving Day, which, under the Collective Agreement, is a day designated as a holiday, fell on October 14th, the second day of rest of the Grievor. The agreement provides in Article 16.02 that when such a situation arises the holiday is moved to the employee's first working day following his day of rest. From October 16th to the 21st the Grievor was on annual leave and came back to work on October 25th (October 22nd, 23rd and 24th being scheduled days of rest).

The Employer asserts that October 16th was the Grievor's first scheduled working day following his day of rest and the Grievor contends that October 25th is the designated working day under Article 16.02. The

Grievor claims that he is entitled to be paid one and one-half times his regular straight time hourly rate, for all times worked by him on the Thanksgiving holiday as defined under the Collective Bargaining Agreement.

Article 16.01 of the Collective Bargaining Agreement operates to move a specified holiday which coincides with an employee's day of rest to the employee's first working day following the day of rest.

The Employer alleges that the reasonable and proper interpretation of this clause requires the application of the scheduled day of rest.

Counsel for the Employer argues that the interpretation advanced by the bargaining agent has the effect of saying that there are as many sets of eleven statutory holidays as there are individual employees. It is noted that it was not the intention of either party to personalize the application.

However, the clear wording of the section by the use of the phrase "the employee's first working day following his day of rest" clearly prescribes a personal designation.

For reasons indicated in the Warren decision, I cannot accede to the Employer's argument in this regard.

Article 16.02 clearly indicates that if a holiday coincides with an employee's day of rest, as are the facts in this case, the holiday shall be moved to the employee's first working day following his day of rest. There is no justification for interpreting this clause as meaning the first scheduled work day. The employee is given the unqualified right, by virtue of the contract language, to insist that he is entitled to overtime compensation if he works on a holiday which is clearly defined under Article 16.02 as being the first day he works after his day of rest.

The grievance is allowed.

"W. Steward Martin",
Adjudicator.

Winnipeg, Manitoba.
June 10, 1969.